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THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1997 CUMULATIVE SUPPLEMENT

Volume 17

Chapters 117 through 129

Prepared under the supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

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Annotated through 486 S.E.2d 626. For complete scope of annotations, see scope of volume page.

Place Behind Supplement Tab in Binder Volume. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

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Preface

This Cumulative Supplement to Volume 17 contains the general laws of a permanent nature enacted by the General Assembly through the 1997 Regular Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purposes of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to Michie, Law Publishers, Charlottesville, Virginia.

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See the main volume for the complete User's Guide.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1997 Regular Session affecting Chapters 117 through 129 of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 344, p. 732.
North Carolina Court of Appeals Reports through Volume 123, p. 790.
South Eastern Reporter 2nd Series through Volume 486, p. 626.
Federal Reporter 3rd Series through Volume 116, p. 875.
Federal Supplement through Volume 965, p. 1486.
Federal Rules Decisions through Volume 172, p. 600.
Bankruptcy Reports through Volume 209, p. 549.
Supreme Court Reporter through Volume 117, p. 1864.
North Carolina Law Review through Volume 75, p. 1088.
Wake Forest Law Review through Volume 32, p. 217.
Campbell Law Review through Volume 18, p. 201.
Duke Law Journal through Volume 45, p. 1088.
North Carolina Central Law Journal through Volume 25, p. 100.
Opinions of the Attorney General.

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The General Statutes of North Carolina 1997 Cumulative Supplement

VOLUME 17

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ARTICLE 2.

Electric Membership Corporations.

§ 117-10.2. (See editor's note) Restriction on municipal service.

Except as otherwise provided in this section, no electric membership corporation shall furnish electric service to, or within the limits of, any incorporated city or town, except pursuant to a franchise that may be granted under the provisions of G.S. 117-10.1, or as permitted under G.S. 160A-331, 160A-332, and 160A-333. An electric membership corporation may furnish electric service to, or within the limits of, any incorporated city or town if the city or town and all electric suppliers, including public utilities, other electric membership corporations and other cities or towns, then furnishing electric service to or within such city or town consent thereto in writing. (1965, c. 287, s. 10; 1997-346, s. 3.)

Section Set Out Twice. — The section above is effective until the adjournment sine die of the 1999 General Assembly. For the section effective upon the adjournment sine die of the 1999 General Assembly, see the following section, also numbered § 117-10.2.

Editor's Note. — Session Laws 1997-346, s. 6, provides: "This act expires on the date of the adjournment sine die of the 1999 General Assembly."

Effect of Amendments. — The 1997 amendment, effective July 31, 1997, and applicable only to annexations or incorporations that occur on or after the effective date, added "Except as otherwise provided in this section" at the beginning, and substituted "G.S. 160A-331, 160A-332, and 160A-333. An" for "G.S. 160-511, 160-512, and 160-513; provided, that an". See editor's note for expiration.

§ 117-10.2. (See editor's note) Restriction on municipal service.

No electric membership corporation shall furnish electric service to, or within the limits of, any incorporated city or town, except pursuant to a franchise that may be granted under the provisions of G.S. 117-10.1, or as permitted under G.S. 160-511, 160-512, and 160-513; provided, that an electric membership corporation may furnish electric service to, or within the limits of, any incorporated city or town if the city or town and all electric suppliers, including public utilities, other electric membership corporations and other cities or towns, then furnishing electric service to or within such city or town consent thereto in writing. (1965, c. 287, s. 10; 1997-346, s. 3.)

Section Set Out Twice. — The section above is effective upon the adjournment sine die of the 1999 General Assembly. For the section effective until the adjournment sine die of the 1999 General Assembly, see the preceding section, also numbered § 117-10.2.

§ 117-19. Taxes and assessments.

(a) From and after April 20, 1965, no electric membership corporation heretofore or hereafter organized, reorganized, or domesticated under the provisions of this Chapter shall be a public agency; nor shall any such corporation be, or have the rights of, a political subdivision of the State.

(b) With respect to its properties owned and revenues received on and after January 1, 1967, each electric membership corporation operating within the State shall be subject to, and shall pay taxes and assessments under, all laws relative to State, county, municipal and other local taxes and assessments applicable to the electric light and power companies in this State, except income tax.

(c) through (e) Repealed by Session Laws 1997-6, s. 16, effective March 21, 1997. (1935, c. 291, s. 14; 1965, c. 287, s. 12; 1997-6, s. 16.)

Editor's Note. — Session Laws 1997-6, s. 21 provides that this act does not affect the rights or liabilities of the State, or taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

Effect of Amendments. — The 1997 amendment, effective March 21, 1997, repealed subsections (c) through (e). See editor's note for applicability.

§ 117-20. (See editor's note) Encumbrance, sale, etc., of property.

No corporation may sell, mortgage, lease or otherwise encumber or dispose of any of its property (other than merchandise and property which lie within the limits of an incorporated city or town, or which shall represent not in excess of ten percent (10%) of the total value of the corporation's assets, or which in the judgment of the board are not necessary or useful in operating the corporation) unless

(1) Authorized so to do by the votes cast in person or by proxy by at least two-thirds of its total membership, and
(2) The consent of the holders of seventy-five per centum (75%) in amount of the bonds of such corporation then outstanding is obtained.

Notwithstanding the foregoing provisions of this section, the members of such a corporation may, by the affirmative majority of the votes cast in person or by proxy at any meeting of the members, delegate to the board of directors the power and authority (i) to borrow moneys from any source and in such amounts as the board may from time to time determine, (ii) to mortgage or otherwise pledge or encumber any or all of the corporation's property or assets as security therefor, and (iii) with respect to Electric Membership Corporations only, to sell and lease back any of the corporation's property or assets. (1935, c. 291, s. 15; 1965, c. 287, s. 13; 1969, c. 670, s. 1; 1987, c. 448, s. 1; 1997-346, s. 4.)

Section Set Out Twice. — The section above is effective until the adjournment sine die of the 1999 General Assembly. For the section effective upon the adjournment sine die of the 1999 General Assembly, see the following section, also numbered § 117-20.

Editor's Note. —

Session Laws 1997-346, s. 6, provides: "This act expires on the date of the adjournment sine die of the 1999 General Assembly."

Effect of Amendments. — The 1997 amendment, effective July 31, 1997, and applicable only to annexations or incorporations that occur on or after the effective date, in subdivision (1) inserted "or by proxy" and deleted "without proxies" following "membership." See editor's note for expiration.

§ 117-20. (See editor's note) Encumbrance, sale, etc., of property.

No corporation may sell, mortgage, lease or otherwise encumber or dispose of any of its property (other than merchandise and property which lie within the limits of an incorporated city or town, or which shall represent not in excess of ten percent (10%) of the total value of the corporation's assets, or which in the judgment of the board are not necessary or useful in operating the corporation) unless

(1) Authorized so to do by the votes cast in person by at least two-thirds of its total membership without proxies, and
(2) The consent of the holders of seventy-five per centum (75%) in amount of the bonds of such corporation then outstanding is obtained.

Notwithstanding the foregoing provisions of this section, the members of such a corporation may, by the affirmative majority of the votes cast in person or by proxy at any meeting of the members, delegate to the board of directors the power and authority (i) to borrow moneys from any source and in such amounts as the board may from time to time determine, (ii) to mortgage or otherwise pledge or encumber any or all of the corporation's property or assets as security therefor, and (iii) with respect to Electric Membership Corporations only, to sell and lease back any of the corporation's property or assets. (1935, c. 291, s. 15; 1965, c. 287, s. 13; 1969, c. 670, s. 1; 1987, c. 448, s. 1; 1997-346, s. 4.)

Section Set Out Twice. — The section above is effective upon the adjournment sine die of the 1999 General Assembly. For the section effective until the adjournment sine die of the 1999 General Assembly, see the preceding section, also numbered § 117-20.

§ 117-24. (See editor's note) Dissolution.

Any corporation created hereunder may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed "Certificate of Dissolution of ...." (the blank space being filled in with the name of the corporation) and shall state:

(1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.
(2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the dates on which the certificates of incorporation of the original corporations were filed.
(3) That the corporation elects to dissolve.
(4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by at least two-thirds of its total membership.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be distributed among the members in such manner as is provided for in the corporation's charter or bylaws, and the charter or bylaws may provide for distributions to persons who were members in one or more prior years. (1935, c. 291, s. 19; 1965, c. 287, s. 14; 1987, c. 448, s. 2; 1997-346, s. 5.)

Section Set Out Twice. — The section above is effective until the adjournment sine die of the 1999 General Assembly. For the section effective upon the adjournment sine die of the 1999 General Assembly, see the following section, also numbered § 117-24.

Editor's Note. — Session Laws 1997-346, s. 6, provides: "This act expires on the date of the adjournment sine die of the 1999 General Assembly."

Effect of Amendments. — The 1997 amendment, effective July 31, 1997, and applicable only to annexations or incorporations that occur on or after the effective date, in the second paragraph inserted "or by proxy", and deleted "without proxies" following "membership." See editor's note for expiration.

§ 117-24. (See editor's note) Dissolution.

Any corporation created hereunder may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed "Certificate of Dissolution of ...." (the blank space being filled in with the name of the corporation) and shall state:

(1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.

(2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the dates on which the certificates of incorporation of the original corporations were filed.

(3) That the corporation elects to dissolve.

(4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person by at least two-thirds of its total membership without proxies.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be distributed among the members in such manner as is provided for in the corporation's charter or bylaws, and the charter or bylaws may provide for distributions to persons who were members in one or more prior years. (1935, c. 291, s. 19; 1965, c. 287, s. 14; 1987, c. 448, s. 2; 1997-346, s. 5.)

Section Set Out Twice. — The section above is effective upon the adjournment sine die of the 1999 General Assembly. For the section effective until the adjournment sine die of the 1999 General Assembly, see the preceding section, also numbered § 117-24.

Chapter 119.

Gasoline and Oil Inspection and Regulation.

Article 2A.

Regulation of Rerefined or Reprocessed Oil.

Sec.

119-13.1. Definitions.
119-13.2. Labels required on sealed containers; oil to meet minimum specifications.
119-13.3. Violation a misdemeanor.

Article 3.

Gasoline and Oil Inspection.

119-15. Definitions that apply to Article.
119-16, 119-16.1. [Repealed.]
119-16.2. Application for license.
119-18. Inspection tax and distribution of the tax proceeds.

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119-19. Authority of Secretary to cancel a license.
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119-26.1. Oxygen content standards and reformulated gasoline.
119-27.1. Self-service gasoline pumps; display of owner's or operator's name, address and telephone number.
119-39.1. Civil Penalties.
119-40, 119-41. [Repealed.]
119-44. [Repealed.]

Article 5.

Liquefied Petroleum Gases.

119-61. Replacement data plates for liquified petroleum gas tanks.

ARTICLE 2A.

Regulation of Rerefined or Reprocessed Oil.

§ 119-13.1. Definitions.

As used in this Article:

(1) "Lubricating oil" means any oil classified for the use in an internal combustion engine, hydraulic system, gear box, differential, or wheel bearings.

(1a) "Recycled oil" means any oil prepared from used oil for energy recovery or reuse as a petroleum product by reclaiming, reprocessing, rerefining, or other means that use properly treated used oil as a substitute for petroleum products.

(1b) "Rerefined oil" means used oil that is refined to remove the physical and chemical contaminants acquired through use and that, by itself or when blended with new lubricating oil or additives, meets applicable American Petroleum Institute (A.P.I.) service classifications.

(2) "Specifications" means the minimum chemical properties or analysis as determined by the American Society for Testing Materials (A.S.T.M.) test methods using current ASTM analytical procedures.

(3) "Used oil" means any oil that has been refined from crude or synthetic oil and, as a result of use, storage, or handling becomes unsuitable for its original purpose due to the loss of its original properties or the presence of impurities, but that may be rerefined for further use. (1953, c. 1137; 1979, c. 158, s. 1; 1995, c. 516, s. 1.)

Editor's Note. — The definitions in this section were placed in alphabetical order at the direction of the Revisor of Statutes.

§ 119-13.2. Labels required on sealed containers; oil to meet minimum specifications.

(a) It shall be unlawful to offer for sale or sell or deliver in this State previously used oil that has not been rerefined or recycled oil that has not been rerefined, as defined in G.S. 119-13.1, in a sealed container unless this container be labeled or bear a label on which shall be expressed the brand or trade name of the oil and the words "made from previously used lubricating oil"; the name and address of the person, firm, or corporation that has rerefined or reprocessed said oil or placed it in the container; the Society of Automotive Engineers (S.A.E.) viscosity grade; the net contents of the container expressed in U.S. liquid measure of quarts, gallons, or pints; which label has been registered and approved by the Gasoline and Oil Inspection Division of the Department of Agriculture and Consumer Services; and that the oil in each container shall meet the minimum specifications. The Gasoline and Oil Inspection Board shall adopt minimum quality specifications, the measurement of which shall be accomplished using current A.S.T.M. analytical procedures.

(b) A person may represent a product made in whole or in part from rerefined oil to be substantially equivalent to a product made from virgin oil for a particular end use if the product conforms with the applicable American Petroleum Institute (A.P.I.) service classifications. (1953, c. 1137; 1979, c. 158, s. 2; 1995, c. 516, s. 2; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture."

§ 119-13.3. Violation a misdemeanor.

Any person, firm, or corporation violating any of the provisions of this Article shall for each offense be guilty of a Class 1 misdemeanor. For a second or subsequent offense, the person shall also be enjoined from selling or distributing previously used oil for not less than one year nor more than five years. (1953, c. 1137; 1993, c. 539, s. 901; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 516, s. 3.)

ARTICLE 3.

Gasoline and Oil Inspection.

§ 119-15. Definitions that apply to Article.

The following definitions apply in this Article:

(1) Alternative fuel. — Defined in G.S. 105-449.130.

(2) Gasoline. — Defined in G.S. 105-449.60.

(3) Kerosene. — Petroleum oil that is free from water, glue, and suspended matter and that meets the specifications and standards adopted by the Gasoline and Oil Inspection Board.

(3a) Kerosene distributor. — A person who acquires kerosene from any of the following for subsequent sale:

  a. A supplier licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes.

b. A kerosene supplier.
c. Another kerosene distributor.

(3b) Kerosene supplier. — Either of the following:

a. A person who supplies both kerosene and motor fuel and, consequently, is required to be licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes.

b. A person who is not required to be licensed as a supplier under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for kerosene to be used to fuel an airplane.

(4) Motor fuel. — Defined in G.S. 105-449.60.

(5) Person. — Defined in G.S. 105-229.90. (1937, c. 425, s. 2; 1995, c. 390, s. 19; 1995 (Reg. Sess., 1996), c. 647, s. 53; 1997-6, s. 17.)

Editor's Note. — The subdivision designations (3a) and (3b) were assigned by the Revisor of Statutes, those definitions having been enacted as subdivisions (4) and (5), respectively.

Session Laws 1997-6, s. 21 provides that this act does not affect the rights or liabilities of the State, or taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, rewrote this section.

The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, added present subdivisions (4) [3a] and (5) [3b], and renumbered subdivisions (4) and (5) as subdivisions (6) and (7).

The 1997 amendment, effective March 21, 1997, in subdvision (3b) added "Either of the following:" after the subcatchline, added the (3b)a. and (3b)b. designations and added subdivision (3b)a.

§§ 119-16, 119-16.1: Repealed by Session Laws 1995, c. 390, ss. 20 and 21.

§ 119-16.2. Application for license.

(a) When Required. — A person may not engage in business as a kerosene supplier unless the person is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes or has a kerosene supplier license issued under this section. A kerosene distributor is required to have a kerosene distributor license only if the distributor imports kerosene. Other kerosene distributors may elect to have a kerosene distributor license. A licensed kerosene distributor that buys kerosene from a supplier licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes has the right to defer payment of the inspection tax until the supplier is required to remit the tax to this State or another state. A licensed kerosene distributor that pays the tax due a supplier licensed under that Part by the date the supplier must pay the tax to the State may deduct from the amount due a discount in the amount set in G.S. 105-449.93.

(b) Application. — To obtain a license under this section, an applicant must file an application with the Secretary of Revenue on a form provided by the Secretary and file with the Secretary a bond in the amount required by the Secretary, not to exceed twenty thousand dollars ($20,000). An applicant must give the Secretary the same information the applicant would be required to give under

Part 2 of Article 36C of Chapter 105 of the General Statutes if the applicant were applying for a license under that Part.

(c) General. — A bond filed under this section must be conditioned on compliance with this Article, be payable to the State, and be in the form required by the Secretary. A license issued under this section remains in effect until surrendered or canceled, must be displayed in the same manner as a license issued under Part 2 of Article 36C of Chapter 105 of the General Statutes, and is subject to the same restrictions as a license issued under that Part. A person who fails to comply with this section is guilty of a Class 1 misdemeanor. (1967, c. 1110, s. 12; 1973, c. 476, s. 193; 1993, c. 539, s. 902; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 745, s. 29; 1995, c. 390, s. 22; 1995 (Reg. Sess., 1996), c. 647, s. 54; 1997-6, s. 18.)

Editor's Note. — Session Laws 1997-6, s. 21 provides that this act does not affect the rights or liabilities of the State, or taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, substituted "is licensed as a supplier or a distributor under Part 2 of Article 36C of Chapter 105 of the General Statutes or has" for "has either a license issued under G.S. 105-433 or" in the first sentence, and in the third and fifth sentences substituted "Part 2 of Article 36C of Chapter 105 of the General Statutes" for "G.S. 105-433", and substituted "Part" for "section" at the end of both sentences.

The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, added the subsection designation (a); in subsection (a), added the subcatchline "When Required", in the first sentence, substituted "supplier" for "distributor", and deleted "is licensed as a supplier or a distributor under Part 2 of Article 36C of Chapter 105 of the General Statutes or" following "unless the person", and added the second, third, fourth and fifth sentences; added the subsection designations (b) and (c); added the subcatchline "Application" to subsection (b); and added the subcatchline "General" to subsection (c).

The 1997 amendment, effective March 21, 1997, added "is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes" preceding "has a kerosene" in the first sentence of subsection (a).

§ 119-18. Inspection tax and distribution of the tax proceeds.

(a) Tax. — An inspection tax of one fourth of one cent (¼ of 1¢) per gallon is levied upon all of the following fuel, regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes:

(1) Motor fuel that is not dyed diesel fuel.
(2) Dyed diesel fuel used to operate a highway vehicle.
(3) Alternative fuel used to operate a highway vehicle.
(4) Kerosene.

The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of Revenue at the same time that the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and by a kerosene supplier. A monthly report is due by the 22nd of each month and applies to kerosene sold during the preceding month by a supplier licensed under that Part and to kerosene received during the preceding month by a kerosene supplier.

(b) Proceeds. — The proceeds of the inspection tax levied by this section shall be applied first to the costs of administering this Article and Subchapter V of Chapter 105 of the General Statutes. The remainder of the proceeds shall be credited on a monthly basis to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund. If the amount of revenue in the Noncommercial Fund at the end of a month is at least five million dollars ($5,000,000), one-half of the remainder of the proceeds shall be credited to the Noncommercial Fund and one-half of the remainder of the proceeds shall be credited to the Commercial Fund. If the amount of revenue in the Noncommercial Fund at the end of a month is less than this threshold amount, all of the remainder of the proceeds shall be credited to the Noncommercial Fund.

(c) No Local Tax. — No county, city, or town shall impose any inspection charge, tax, or fee, in the nature of the charge prescribed by this section, upon kerosene and motor fuel. (1917, c. 166, s. 4; C.S., s. 4856; 1933, c. 544, s. 5; 1937, c. 425, s. 5; 1967, c. 1110, s. 12; 1973, c. 476, s. 193; 1985, c. 602, s. 2; 1991, c. 636, s. 12; 1991 (Reg. Sess., 1992), c. 913, s. 12; 1993, c. 402, s. 8; 1995, c. 390, s. 23; 1995 (Reg. Sess., 1996), c. 647, s. 55.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, in subsection (a) substituted "motor fuel, and alternative fuel" for "and motor fuel" in the first sentence, substituted "Article 36C" for "Articles 36 and 36A" in the second sentence, and added the third sentence.

The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, in subsection (a), substituted "of the following fuel, regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes" for "kerosene, motor fuel, and alternative fuel", added subdivisions (a)(1), (a)(2), (a)(3), and (a)(4), and made a related change, in the second paragraph, in the third sentence, substituted "supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and by a kerosene supplier" for "distributor required to be licensed under G.S. 119-16.2", and in the last sentence, deleted "by a distributor required to be licensed under G.S. 119-16.2" following "A monthly report", substituted "22nd" for "20th", added "to kerosene sold during the preceding month by a supplier licensed under that Part and", and substituted "during the preceding month by a kerosene supplier" for "by the distributor during the preceding month."

§ 119-19. Authority of Secretary to cancel a license.

The Secretary of Revenue may cancel a license issued under G.S. 119-16.2 upon the written request of the license holder. The Secretary may summarily cancel a license issued under G.S. 119-16.2 or Article 36C or 36D of Chapter 105 of the General Statutes when the Secretary finds that the license holder is incurring liability for the tax imposed by this Article after failing to pay a tax when due under this Article. The Secretary may cancel the license of a license holder who files a false report under this Article or fails to file a report required under this Article after holding a hearing on whether the license should be cancelled.

The Secretary must send a person whose license is summarily cancelled a notice of the cancellation and must give the person an opportunity to have a hearing on the cancellation within 10 days after the cancellation. The Secretary must give a person whose license may be cancelled after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license cancellation and a notice of hearing must be sent by registered mail to the last known address of the license holder.

When the Secretary cancels a license and the license holder has paid all taxes and penalties due under this Article, the Secretary must either return to the license holder the bond filed by the license holder or notify the person liable on the bond and the license holder that the person is released from liability on the bond. (1933, c. 544, s. 10; 1967, c. 1110, s. 12; 1973, c. 476, s. 193; 1995, c. 390, s. 24.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, rewrote the catchline of this section, which formerly read "Failure to report or pay tax; cancellation of license", and rewrote the text of this section.

§ 119-22: Repealed by Session Laws 1995, c. 390, s. 25, effective January 1, 1996.

§ 119-26.1. Oxygen content standards and reformulated gasoline.

(a) Rules adopted pursuant to G.S. 143-215.107(a)(9) to regulate the oxygen content of gasoline or to require the use of reformulated gasoline shall be implemented by the Department of Agriculture and Consumer Services and the Gasoline and Oil Inspection Board. Such rules shall be implemented within any area specified by the Environmental Management Commission when the Commission certifies to the Commissioner of Agriculture that implementation:

(1) Will improve the ambient air quality within the specified county or counties;

(2) Is necessary to achieve attainment or preclude violations of the National Ambient Air Quality Standards; or

(3) Is otherwise necessary to meet federal requirements.

(b) The Department of Agriculture and Consumer Services and the Gasoline and Oil Inspection Board may adopt rules to implement this section. Rules shall be consistent with the implementation schedule and rules adopted by the Environmental Management Commission.

(c) The Commissioner of Agriculture may assess and collect civil penalties for violations of rules adopted under G.S. 143-215.107(a)(9) or this section in accordance with G.S. 143-215.114A. The Commissioner of Agriculture may institute a civil action for injunctive relief to restrain, abate, or prevent a violation or threatened violation of rules adopted under G.S. 143-215.107(a)(9) or this section in accordance with G.S. 143-215.114C. The assessment of a civil penalty under this section and G.S. 143-215.114A or institution of a civil action under G.S. 143-215.114C and this section shall not relieve any person from any other penalty or remedy authorized under this Article.

(d) The Commissioner of Agriculture may delegate his powers and duties under this subsection to the Director of the Standards Division of the Department of Agriculture and Consumer Services. (1991 (Reg. Sess., 1992), c. 889, s. 4; 1997-261, s. 83.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, in subsection (a) inserted "and Consumer Services" preceding "and the Gasoline"; in subsection (b) inserted "and Consumer Services" preceding "and the Gasoline"; and substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" at the end of subsection (d).

§ 119-27.1. Self-service gasoline pumps; display of owner's or operator's name, address and telephone number.

(a) Every owner of, or other person in control of, a self-service gas pump or station whose equipment permits purchase and physical transfer of gasoline or oil products by insertion of money into some device or machine without the necessity of personal service by the owner or his agent shall clearly affix a sticker to each pump showing his name, address, and telephone number.

(b) The North Carolina Department of Agriculture and Consumer Services shall have the responsibility for the enforcement of this section. (1973, c. 1324, s. 1; 1997-261, s. 84.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" preceding "shall have the" in subsection (b).

§ 119-39.1. Civil Penalties.

The Commissioner of Agriculture may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. (1995, c. 516, s. 4.)

Editor's Note. — Session Laws 1995, c. 516, s. 17, provides that this section is effective October 1, 1995, and is applicable to violations occurring on or after that date.

§§ 119-40, 119-41: Repealed by Session Laws 1995 (Regular Session, 1996), c. 647, s. 56, effective July 1, 1996.

§ 119-43. Display required on containers used in making deliveries.

CASE NOTES

Purpose. — The safety provisions requiring that gasoline be sold only in approved and labeled containers were enacted to prevent various injuries possible from the improper storage of a highly flammable and dangerous material. Al-Hourani v. Ashley, — N.C. App. —, 485 S.E.2d 887 (1997).

Criminal activity is not the type of harm that the safety provisions were designed to protect against. Al-Hourani v. Ashley, — N.C. App. —, 485 S.E.2d 887 (1997).

§ 119-44: Repealed by Session Laws 1995 (Regular Session, 1996), c. 647, s. 56, effective July 1, 1996.

ARTICLE 5.

Liquefied Petroleum Gases.

§ 119-61. Replacement data plates for liquified petroleum gas tanks.

A liquified petroleum gas tank of 120 gallons or more that is subject to the American Society of Mechanical Engineers (ASME) Code must have a data plate indicating that it was built in accordance with that Code. The Commissioner may issue a data plate to replace a rusting or partially detached data plate on a liquified petroleum gas tank. The Commissioner shall charge a person to whom a replacement data plate is issued a fee of twenty dollars ($20.00) for the plate. Fees collected under this section shall be credited to the Department of Agriculture and Consumer Services and applied to the cost of issuing replacement data plates. (1993, c. 356, s. 1; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture."

Chapter 120.

General Assembly.

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ARTICLE 1.

Apportionment of Members; Compensation and Allowances.

§ 120-2.2. Dividing precincts in Senate and House apportionment acts restricted.

(a) An act of the General Assembly that apportions Senate or House districts after the return of a census may not divide precincts unless an act that apportioned Senate or House districts after the return of that same census has been rejected by the United States Department of Justice or the District Court for the District of Columbia under section 5 of the Voting Rights Act of 1965.

(b) If an act that apportioned Senate or House districts has been rejected by the United States Department of Justice or the District Court for the District of Columbia under section 5 of the Voting Rights Act of 1965, then a subsequent act may only divide the minimum number of precincts necessary to obtain approval of the act under section 5 of the Voting Rights Act of 1965.

(c) This section does not prevent the General Assembly from taking any action to comply with federal law or the Constitution of the United States. (1995, c. 355, s. 1; c. 509, s. 135.2(h).)

Editor's Note. — This section was originally enacted by Session Laws 1995, c. 355, s. 1, as G.S. 120-2.1, effective June 29, 1995. Session Laws 1995, c. 590, s. 135.2(h), recodified this section as G.S. 120-2.2, effective July 29, 1995.

§ 120-3. Pay of members and officers of the General Assembly.

(a) The Speaker of the House shall be paid an annual salary of thirty-eight thousand one hundred fifty-one dollars ($38,151) payable monthly, and an expense allowance of one thousand four hundred thirteen dollars ($1,413) per month. The President Pro Tempore of the Senate shall be paid an annual salary of thirty-eight thousand one hundred fifty-one dollars ($38,151) payable monthly, and an expense allowance of one thousand four hundred thirteen dollars (1,413) per month. The Speaker Pro Tempore of the House shall be paid an annual salary of twenty-one thousand seven hundred thirty-nine dollars ($21,739) payable monthly, and an expense allowance of eight hundred thirty-six dollars (836.00) per month. The Deputy President Pro Tempore of the Senate shall be paid an annual salary of twenty-one thousand seven hundred thirty-nine dollars ($21,739) payable monthly, and an expense allowance of eight hundred thirty-six dollars ($836.00) per month. The majority and minority leaders in the House and the majority and minority leaders in the Senate shall be paid an annual salary of seventeen thousand forty-eight dollars ($17,048) payable monthly, and an expense allowance of six hundred sixty-six dollars ($666.00) per month.

(b) Every other member of the General Assembly shall receive increases in annual salary only to the extent of and in the amounts equal to the average increases received by employees of the State, effective upon convening of the next Regular Session of the General

Assembly after enactment of these increased amounts, except no such increase is granted upon the convening of the 1997 Regular Session of the General Assembly. Accordingly, upon convening of the 1997 Regular Session of the General Assembly, every other member of the General Assembly shall be paid an annual salary of thirteen thousand nine hundred fifty-one dollars ($13,951) payable monthly, and an expense allowance of five hundred fifty-nine dollars ($559.00) per month.

(c) The salary and expense allowances provided in this section are in addition to any per diem compensation and any subsistence and travel allowance authorized by any other law with respect to any regular or extra session of the General Assembly, and service on any State board, agency, commission, standing committee and study commission. (1929, c. 2, s. 1; 1951, c. 23, s. 1; 1965, c. 917; c. 1157, s. 1; 1967, c. 1120; 1969, c. 1278, s. 1; 1971, c. 1200, s. 5; 1973, c. 1482, s. 1; 1977, 2nd Sess., c. 1249, ss. 1, 2; 1979, 2nd Sess., c. 1137, s. 9.1; 1983, c. 761, s. 203; 1983 (Reg. Sess., 1984), c. 1034, s. 209; 1985, c. 479, s. 208; 1985 (Reg. Sess., 1986), c. 1014, s. 29; 1987, c. 738, s. 15; c. 830, s. 70; 1987 (Reg. Sess., 1988), c. 1086, s. 9; 1989, c. 752, s. 26; 1991 (Reg. Sess., 1992), c. 900, s. 35; 1993, c. 321, s. 52; 1993 (Reg. Sess., 1994), c. 769, s. 7.5; 1995, c. 507, s. 7.8.)

Editor's Note. —

Session Laws 1995, c. 358, s. 2(a), as amended by Session Laws 1995, c. 437, s. 1, and by Session Laws 1995, c. 467, s. 1, provides that the salaries established by Session Laws 1993, c. 769, s. 7.5, shall remain until July 28, 1995, at the level set by or under that section as of June 30, 1995; and that no State employee or officer may prior to July 28, 1995, receive a merit increase or annual increment.

Session Laws 1995, c. 507, s. 1.1, provides that that act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 120-3.1. Subsistence and travel allowances for members of the General Assembly.

(a) In addition to compensation for their services, members of the General Assembly shall be paid the following allowances:

(1) A weekly travel allowance for each week or fraction thereof that the General Assembly is in regular or extra session. The amount of the weekly travel allowance shall be calculated for each member by multiplying the actual round-trip mileage from that member's home to the City of Raleigh by the rate per mile which is the business standard mileage rate set by the Internal Revenue Service in Rev. Proc. 93-51, December 27, 1993.

(2) A travel allowance at the rate which is the business standard mileage rate set by the Internal Revenue Service in Rev. Proc. 93-51, December 27, 1993, whenever the member travels, whether in or out of session, as a representative of the General Assembly or of its committees or commissions, with the approval of the Legislative Services Commission.

(3) A subsistence allowance for meals and lodging at a daily rate equal to the maximum per diem rate for federal employees traveling to Raleigh, North Carolina, as set out at 58 Federal Register 67959 (December 22, 1993), while the General Assembly is in session and, except as otherwise provided in this subdivision, while the General Assembly is

not in session when, with the approval of the Speaker of the House of Representatives in the case of Representatives or the President Pro Tempore of the Senate in case of Senators, the member is:

a. Traveling as a representative of the General Assembly or of its committees or commissions, or
b. Otherwise in the service of the State.

A member who is authorized to travel, whether in or out of session, within the United States outside North Carolina, may elect to receive, in lieu of the amount provided in the preceding paragraph, a subsistence allowance of twenty-six dollars ($26.00) a day for meals, plus actual expenses for lodging when evidenced by a receipt satisfactory to the Legislative Services Officer, the latter not to exceed the maximum per diem rate for federal employees traveling to the same place, as set out at 58 Federal Register 67950-67964 (December 22, 1993) and at 59 Federal Register 23702-23709 (May 6, 1994).

(4) A member may be reimbursed for registration fees as permitted by the Legislative Services Commission.

(b) Payment of travel and subsistence allowances shall be made to members of the General Assembly only after certification by the claimant as to the correctness thereof on forms prescribed by the Legislative Services Commission. Claims for travel and subsistence payments shall be paid at such times as may be prescribed by the Legislative Services Commission.

(c) When the General Assembly by joint action of the two houses adjourns to a day certain, which day is more than three days after the date of adjournment, the period between the date of adjournment and the date of reconvening shall for the purposes of this section be deemed to be a period when the General Assembly is not in session, and no member shall be entitled to subsistence and travel allowance during that period, except under circumstances which would entitle him to subsistence and travel allowance when the General Assembly is not in session.

(d) Repealed by Session Laws 1989 (Regular Session 1990), c. 1066, s. 24(a), effective January 30, 1991. (1957, c. 8; 1959, c. 939; 1961, c. 889; 1965, c. 86, s. 1; 1969, c. 1257, s. 1; 1971, c. 1200, ss. 1-4; 1973, c. 1482, s. 2; 1977, 2nd Sess., c. 1249, ss. 3, 4; 1979, 2nd Sess., c. 1137, s. 30; 1983, c. 761, ss. 25, 26; 1983 (Reg. Sess., 1984), c. 1034, ss. 184, 186; 1985, c. 479, s. 206; 1985 (Reg. Sess., 1986), c. 1014, s. 40(a); 1987 (Reg. Sess., 1988), c. 1086, s. 30(c); 1989, c. 117; 1989 (Reg. Sess., 1990), c. 1066, s. 24(a); 1991 (Reg. Sess., 1992), c. 900, s. 51; 1993, c. 321, ss. 24(b), (c); 1993 (Reg. Sess., 1994), c. 769, s. 7.28; 1996, 2nd Ex. Sess., c. 18, s. 8(b).)

Editor's Note. —
Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, in subdivision (a)(3), inserted "of Representatives" in the introductory language, and substituted "Legislative Services Officer" for "Legislative Administrative Officer."

ARTICLE 1A.

Legislative Retirement System.

§ 120-4.22A. Post-retirement increases in allowances.

(a) Retired members and beneficiaries of the Retirement System shall receive post-retirement increases in allowances on the same basis as post-retirement increases in allowances are provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System.

(b) In accordance with subsection (a) of this section, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1986, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(ii) and (jj).

(c) In accordance with subsection (a) of this section, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1987, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(ii) and (jj).

(d) In accordance with subsection (a) of this section, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1988, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(*ll*) and (mm).

(e) In accordance with subsection (a) of this section, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1989, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(*ll*) and (mm).

(f) In accordance with subsection (a) of this section, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1990, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(rr) and (ss).

(g) In accordance with subsection (a) of this section, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992. Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1992, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1992 and June 30, 1992.

(h) In accordance with subsection (a) of this section, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1993, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on January 1, 1993. Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1993, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1993, and June 30, 1993.

(i) In accordance with subsection (a) of this section, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1994, shall be increased by three and one-half percent (3.5%) of the allowance payable on January 1, 1994. Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1994, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1994, and June 30, 1994.

(j) In accordance with subsection (a) of this section, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1995, shall be increased by two percent (2%) of the allowance payable on January 1, 1995. Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1995, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1995, and June 30, 1995.

(k) In accordance with subsection (a) of this section, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1996, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on January 1, 1996. Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1996, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1996, and June 30, 1996.

(*l*) In accordance with subsection (a) of this section, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1997, shall be increased by four percent (4%) of the allowance payable on June 1, 1997. Furthermore, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1997, but before June 30, 1997, shall be increased by a prorated amount of four (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1997, and June 30, 1997. (1985 (Reg. Sess., 1986), c. 1014, s. 49(c); 1987, c. 738, s. 27(d); 1987 (Reg. Sess., 1988), c. 1086, s. 22(d); 1989, c. 752, s. 41(d); 1989 (Reg. Sess., 1990), c. 1077, s. 11; 1991 (Reg. Sess., 1992), c. 900, s. 53(d); 1993, c. 321, s. 74(a); 1993 (Reg. Sess., 1994), c. 769, s. 7.30(k); 1995, c. 507, s. 7.22(c); 1996, 2nd Ex. Sess., c. 18, s. 28.21(c); 1997-443, s. 33.22(f).)

Editor's Note. —

Session Laws 1995, c. 507, s. 1.1, provides that that act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, added subsection (k).

The 1997 amendment, effective July 1, 1997, added subsection (*l*).

§ 120-4.31. Internal Revenue Code compliance.

(a) Notwithstanding any other provisions of law to the contrary, compensation for any calendar year after 1988 in which employee or employer contributions are made and for which annual compensation is used for computing any benefit under this Article shall not exceed the higher of two hundred thousand dollars ($200,000) or the amount determined by the Commissioner of Internal Revenue as the limitation for calendar years after 1989; provided the imposition of the limitation shall not reduce a member's benefit below the amount determined as of December 31, 1988.

Effective January 1, 1996, the annual compensation of a member taken into account for determining all benefits provided under this Article shall not exceed one hundred fifty thousand dollars ($150,000), as adjusted pursuant to section 401(a)(17)(B) of the Internal Revenue Code and any regulations issued under the Code. However, with respect to a person who became a member of the Retirement System prior to January 1, 1996, the imposition of this limitation on compensation shall not reduce the amount of compensation which may be taken into account for determining the benefits of that member under this Article below the amount of compensation which would have been recognized under the provisions of this Article in effect on July 1, 1993.

(b) Notwithstanding any other provisions of law to the contrary, the annual benefit payable on behalf of a member shall, if necessary, be reduced to the extent required by Section 415(b) and (e) of the Internal Revenue Code, as adjusted by the Secretary of the Treasury or his delegate pursuant to Section 415(d) of the Code. If a member is a participant under any qualified defined contributions plan that is required to be taken into account for the purposes of the limitation contained in Section 415 of the Internal Revenue Code, the annual benefit payable under this Article shall be reduced to the extent required by Section 415(e) prior to making any reduction under the defined contribution plan provided by the employer.

(c) On and after January 1, 1989, the retirement allowance of a member who has terminated employment shall begin no later than the later of April 1 of the calendar year following the calendar year that the member attains 70 ½ years of age or April 1 of the calendar year following the calendar year in which the member terminates employment.

(d) This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any other provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee may elect, at the time and in the manner prescribed by the Plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. Provided, an eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net realized appreciation with respect to employer securities). Provided, an eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or an individual retirement annuity. Provided, a distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, or a court ordered equitable distribution of marital property, as provided under G.S. 50-20, whichever may be applicable, are distributees with regard to the interest of the spouse or former spouse. Provided further, a direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee. (1989, c. 276, s. 1; 1993, c. 531, s. 2; 1995, c. 361, s. 4.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, added the second paragraph in subsection (a).

ARTICLE 2.

Duty and Privilege of Members.

§ 120-6.1. Request that reconvened session not be held.

(a) As provided by Section 22(7) of Article II of the Constitution of North Carolina, if within 30 days after adjournment, a bill is returned by the Governor with objections and veto message to that house in which it shall have originated, the Governor shall reconvene that session as provided by Section 5(11) of Article III of the Constitution for reconsideration of the bill, unless the Governor prior to reconvening the session receives written requests dated no earlier than 30 days after such adjournment, signed by a majority of the members of each house that a reconvened session to reconsider vetoed legislation is unnecessary. If sufficient requests are received such that the session will not be reconvened, the Governor shall immediately issue a proclamation to that effect and so notify the President Pro Tempore of the Senate and the principal clerks and presiding officers of both houses.

(b) The form for the requests shall be:

"To the Governor:

A reconvened session to reconsider vetoed legislation is unnecessary.

This ______ day of ______, ______,

________, Member of the [Senate] [House of Representatives]"

Petitions as they are received are public records and shall be maintained by the Office of the Governor. (1995, c. 20, s. 15.1; 1997-1, s. 2.)

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1997 amendment, effective February 22, 1997, added the last sentence of subsection (a).

ARTICLE 6.

Acts and Journals.

§ 120-20. When acts take effect.

Acts of the General Assembly shall be in force only from and after 60 days after the adjournment of the session in which they shall have passed, unless the commencement of the operation thereof be expressly otherwise directed. (1799, c. 527, P.R.; R.C., c. 52, s. 35; 1868-9, c. 270, s. 1; Code, s. 2862; Rev., s. 4417; C.S., s. 6105; 1995, c. 20, s. 3.)

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by

Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1995 amendment, effective on or after January 1, 1997, if constitutional amendments proposed by 1995, c. 5. ss. 1-2 are approved, substituted "60 days" for "30 days".

§ 120-29.1. Approval of bills.

(a) If the Governor approves a bill, the Governor shall write upon the same, below the signatures of the presiding officers of the two houses, the fact, date, and time of approval, as follows: "Approved ________.m. this ________ day of ________, ________" and shall sign the same as follows: "________ Governor". The Governor shall then return the approved bill to the enrolling clerk.

(b) If any bill becomes law because of the failure of the Governor to take any action, it shall be the duty of the Governor to return the measure to the enrolling clerk, who shall sign the following certificate on the measure and deposit it with the Secretary of State: "This bill having been presented to the Governor for his signature on the ________ day of ________, ________ and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law.

This ________ day of ________, ________, ________ Enrolling Clerk".

(c) If the Governor returns any bill to the house of origin with his objections, the Governor shall write such objections on the measure or cause the objections to be attached to the measure. When any such bill becomes law after reconsideration of the two houses, the principal clerk of the second house to act shall, below the objections of the Governor, sign the following certificate: "Became law notwithstanding the objections of the Governor, ________.m. this ________ day of ________, ________". The principal clerk of the second house to act shall fill in the time. The enrolling clerk shall deposit the measure with the Secretary of State.

(d) In calculating the period under Section 22(7) of Article II of the North Carolina Constitution, the day on which the bill is presented to the Governor shall be excluded and the entire last day of the period is included. (1995, c. 20, s. 2; 1997-1, s. 3.)

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995, c. 20, s. 2 having been 120-29.2.

Effect of Amendments. — The 1997 amendment, effective February 22, 1997, deleted "to the left of and" preceding "below the signatures" in subsection (a); in subsection (c), substituted "principal clerk of the second house to act" for "presiding officers" in the second sentence, and for "second of them to sign" in the third sentence; and added subsection (d).

ARTICLE 6A.

Submission of Acts.

§ 120-30.9A. Purpose.

Editor's Note. — Article 6A.1 was renumbered as Article 6A pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

§ 120-30.9B. Statewide statutes; State Board of Elections.

The Executive Secretary-Director of the State Board of Elections shall submit to the Attorney General of the United States:

(1) Within 30 days of the time they become laws all acts of the General Assembly that amend, delete, add to, modify or repeal any provision of Chapter 163 of the General Statutes or any other statewide legislation, except relating to Chapter 7A of the General Statutes, which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965; and

(2) Within 30 days all alterations of precinct boundaries under G.S. 163-132.2(c) in counties covered by Section 5 of the Voting Rights Act of 1965. (1985, c. 579, s. 1; 1989, c. 440, s. 4; 1995, c. 20, s. 4.)

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1995 amendment, effective on or after January 1, 1997, if constitutional amendments proposed by 1995, c. 5. ss. 1-2 are approved, substituted "the time they become laws" for "ratification" in subdivision (1).

§ 120-30.9C. The judicial system; Administrative Office of the Courts.

The Administrative Officer of the Courts shall submit to the Attorney General of the United States within 30 days of the time they become laws all acts of the General Assembly that amend, delete, add to, modify or repeal any provision of Chapter 7A of the General Statutes of North Carolina which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965. (1985, c. 579, s. 1; 1995, c. 20, s. 5.)

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1995

amendment, effective on or after January 1, 1997, if constitutional amendments proposed by 1995, c. 5. ss. 1-2 are approved, substituted "the time they become laws" for "ratification".

§ 120-30.9E. Counties; County Attorney.

The County Attorney of any county covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days:

(1) Of the time they become laws, any local acts of the General Assembly; and

(2) Of adoption actions of the county board of commissioners, or the county board of elections or any other county agency which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 in that county. (1985, c. 579, s. 1; 1995, c. 20, s. 6.)

Local Modification. — Beaufurt County: 1997-1(b).

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1995 amendment, effective on or after January 1, 1997, if constitutional amendments proposed by 1995, c. 5. ss. 1-2 are approved, from the end of the introductory language deleted "of ratification or adoption any local acts of the General Assembly,"; added the subdivision (1) and (2) designations; added subdivision (1); and added "Of adoption" at the beginning of subdivision (2).

§ 120-30.9F. Municipalities; municipal attorney.

The municipal attorney of any municipality covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days:

(1) Of the time they become laws, any local acts of the General Assembly; and

(2) Of adoption actions of the municipal governing body or municipal board of elections or any other municipal agency which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 in that municipality; provided that, if required or allowed by regulations or practices of the United States Department of Justice, a municipal attorney may delay submission of any annexation ordinance or group of ordinances until all previously submitted annexation ordinances have been precleared or otherwise received final disposition. (1985, c. 579, s. 1; 1989, c. 598, s. 4; 1995, c. 20, s. 7.)

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1995 amendment, effective on or after January 1, 1997, if constitutional amendments proposed by 1995, c. 5. ss. 1-2 are approved, from the end of the introductory language deleted "of ratification or adoption any local acts of the General Assembly,"; added the subdivision (1) and (2) designations; added subdivision (1); and added "Of adoption" at the beginning of subdivision (2).

§ 120-30.9G. School Administrative Units; State Board of Education; Local Boards of Education Attorney.

(a) The State Board of Education shall submit to the Attorney General of the United States within 30 days any rules, policies, procedures, or actions taken pursuant to G.S. 115C-64.4 which could result in the appointment of a caretaker administrator or board to perform any of the powers and duties of a local board of education where that school administrative unit is covered by the Voting Rights Act of 1965.

(b) The attorney for any local board of education where that school administrative unit is covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days:

(1) Of the time they become laws, any local acts of the General Assembly; and

(2) Of adoption actions of the local boards of education which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 in that school administrative unit. If the change affecting voting is a merger of two or more school administrative units, the change shall be submitted jointly by the attorneys of the school administrative units involved, or by one of them by agreement of the attorneys involved. (1985, c. 579, s. 1; 1991, c. 529, s. 2; 1995, c. 20, s. 8.)

Local Modification. — Beaufort County: 1997-2(b).

Editor's Note. —

Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1995 amendment, effective on or after January 1, 1997, if constitutional amendments proposed by 1995, c. 5. ss. 1-2 are approved, from the end of the introductory language in subsection (b) deleted "of ratification or adoption any local acts of the General Assembly,"; added the subdivision (1) and (2) designations; added subdivision (1); and added "Of adoption" at the beginning of subdivision (2).

Article 6D.

Local Government Fiscal Information Act.

§ 120-30.45. Fiscal note on legislation.

(a) Every bill and resolution introduced in the General Assembly proposing any change in the law that could increase or decrease expenditures or revenues of a unit of local government shall have attached to it at the time of its consideration by the General

Assembly a fiscal note prepared by the Fiscal Research Division. The fiscal note shall identify and estimate, for the first five fiscal years the proposed change would be in effect, all costs of the proposed legislation. If, after careful investigation, the Fiscal Research Division determines that no dollar estimate is possible, the note shall contain a statement to that effect, setting forth the reasons why no dollar amount can be given. No comment or opinion shall be included in the fiscal note with regard to the merits of the measure for which the note is prepared. However, technical and mechanical defects may be noted.

(b) The sponsor of each bill or resolution to which this section applies shall present a copy of the bill or resolution with the request for a fiscal note to the Fiscal Research Division. Upon receipt of the request and the copy of the bill or resolution, the Fiscal Research Division shall prepare the fiscal note as promptly as possible. The Fiscal Research Division shall prepare the fiscal note and transmit it to the sponsor within two weeks after the request is made, unless the sponsor agrees to an extension of time.

(c) This fiscal note shall be attached to the original of each proposed bill or resolution that is reported favorably by any committee of the General Assembly, but shall be separate from the bill or resolution and shall be clearly designated as a fiscal note. A fiscal note attached to a bill or resolution pursuant to this subsection is not a part of the bill or resolution and is not an expression of legislative intent proposed by the bill or resolution.

(d) If a committee of the General Assembly reports favorably a proposed bill or resolution with an amendment that proposes a change in the law that could increase or decrease expenditures or revenues of a unit of local government, the chair of the committee shall obtain from the Fiscal Research Division and attach to the amended bill or resolution a fiscal note as provided in this section.

(e) The Office of State Budget and Management, the Department of Revenue, the Department of the State Treasurer, the Department of the State Auditor, the State department most directly concerned, and, where appropriate, officials of units of local government, upon the request of Fiscal Research Division, shall assist the Fiscal Research Division in the preparation of the fiscal note.

(f) Copies of fiscal notes prepared by the Fiscal Research Division shall be furnished to the sponsor of the bill or resolution, the chairmen of the Local Government Committees, and the chairmen of the Appropriations, Finance, Rules, or the Senate Ways and Means Committees as appropriate. (1979, 2nd Sess., c. 1262, s. 5; 1995, c. 415, s. 6.)

§ 120-30.49. Compiling federal mandates; annual report.

(a) The Fiscal Research Division shall, in consultation with the appropriate staff of the Research and Bill Drafting Divisions, make an annual report to the General Assembly pertaining to the fiscal effect of federal mandates on, or federal law on which is conditioned the receipt of federal funds by the State and units of local government. The annual report on federal mandates shall include the following:

(1) A listing of federal laws that require the State and any unit of local government, including a county, city, school admin-

istrative unit, or other local entity funded by or through a unit of local government to carry out additional or modified responsibilities;

(2) An estimate of the amount of any increase or decrease in the costs to the State and units of local government in providing or delivering public services required by federal law that are funded in whole or in part by the State or units of local government; and

(3) A listing of any other federal actions directly affecting the expenditures or revenues of the State and units of local government.

(b) The Office of State Budget and Management shall assist the Fiscal Research Division in the preparation of the annual report on federal mandates upon the request of the Division. Each State department, agency, or institution shall cooperate fully with the Fiscal Research Division in compiling the annual report on federal mandates and shall supply information to the Division in accordance with G.S. 120-32.01. The North Carolina Association of County Commissioners, the North Carolina League of Municipalities, and units of local government shall cooperate with the Fiscal Research Division in compiling the annual report on federal mandates, as requested, by supplying information relevant to the expenditures or revenues of units of local government.

(c) Copies of the annual report on federal mandates to the State and units of local government shall be provided to members of the General Assembly and to the Governor, the Office of State Budget and Management, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. (1995, c. 415, s. 7.)

Editor's Note. — Session Laws 1995, c. 415, s. 9, made this section effective October 1, 1995.

ARTICLE 7.

Legislative Services Commission.

§ 120-32. Commission duties.

Editor's Note. —

Session Laws 1995, c. 507, s. 1.1, provides that that act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 7.12, provides: "The Legislative Administrative Officer shall increase the salaries of nonelected employees of the General Assembly in effect for fiscal year 1994-95 by two percent (2%). Nothing in this act limits any of the provisions of G.S. 120-32."

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

Session Laws 1997-443, s. 33.15, provides: "The Legislative Administrative Officer shall increase the salaries of nonelected employees of the General Assembly in effect for fiscal year 1996-97 by four percent (4%). Nothing in this act limits any of the provisions of G.S. 120-32."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

§ 120-32.01. Information to be supplied.

(a) Every State department, State agency, or State institution shall furnish the Legislative Services Office and the Research, Fiscal Research, and Bill Drafting Divisions any information or records requested by them. Except when accessibility is prohibited by a federal statute, federal regulation or State statute, every State department, State agency, or State institution shall give the Legislative Services Office and the Fiscal Research Division access to any data base or stored information maintained by computer, telecommunications, or other electronic data processing equipment, whether stored on tape, disk, or otherwise, and regardless of the medium for storage or transmission.

(b) Notwithstanding subsection (a) of this section, access to the State Personnel Management Information System by the Research and Bill Drafting Divisions shall only be through the Fiscal Research Division. (1983 (Reg. Sess., 1984), c. 1034, s. 177; 1996, 2nd Ex. Sess., c. 18, s. 8.2.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, in subsection (a) substituted "Services" for "Administrative," inserted "Legislative Services Office and the" preceding "Fiscal Research Division"; and deleted "by the Legislative Administrative Office and" following "State Personnel Management Information System" in subsection (b).

§ 120-32.1. Use and maintenance of buildings and grounds.

(a) The Legislative Services Commission shall:

(1) Establish policy for the use of the State legislative buildings and grounds;

(2) Maintain and care for the State legislative buildings and grounds, but the Commission may delegate the actual work of the maintenance of those buildings and grounds to the Department of Administration, which shall perform the work as delegated;

(3) Provide security for the State legislative buildings and grounds;

(4) Allocate space within the State legislative buildings and grounds; and

(5) Have the exclusive authority to assign parking space in the State legislative buildings and grounds.

(b) The Legislative Services Officer shall have posted the rules adopted by the Legislative Services Commission under the authority of this section in a conspicuous place in the State Legislative Building and the Legislative Office Building. The Legislative Services Officer shall have filed a copy of the rules, certified by the chairman of the Legislative Services Commission, in the office of the

Secretary of State and in the office of the Clerk of the Superior Court of Wake County. When so posted and filed, these rules shall constitute notice to all persons of the existence and text of the rules. Any person, whether on his own behalf or for another, or acting as an agent or representative of any person, firm, corporation, partnership or association, who knowingly violates any of the rules adopted, posted and filed under the authority of this section is guilty of a Class 1 misdemeanor. Any person, firm, corporation, partnership or association who combines, confederates, conspires, aids, abets, solicits, urges, instigates, counsels, advises, encourages or procures another or others to knowingly violate any of the rules adopted, posted and filed under the authority of this section is guilty of a Class 1 misdemeanor.

(c) The Legislative Services Commission may cause to be removed at the owner's expense any vehicle parked in the State legislative buildings and grounds in violation of the rules of the Legislative Services Commission and may cause to be removed any vehicle parked in any State-owned parking space leased to an employee of the General Assembly where the vehicle is parked without the consent of the employee to whom the space is leased.

(d) For the purposes of this section, the term "State legislative buildings and grounds" means:

(1) At all times:
  a. The State Legislative Building;
  a1. The areas between the outer walls of the State Legislative Building and the near curbline of those sections of Jones, Wilmington, and Salisbury Streets which border land on which it is situated;
  a2. The area between the outer walls of the State Legislative Building and the far curbline of that section of Lane Street which borders the land on which it is situated;
  b. The Legislative Office Building and the areas between its outer walls and the near curbline of those sections of Lane and Salisbury Streets that border the land on which it is situated;
  c. Any State-owned parking lot which is leased to the General Assembly; and
  d. The bridge between the State Legislative Building and the State Governmental Mall.
(2) In addition, the surface area to the far curbline of those sections of Jones, Wilmington, and Salisbury Streets which border the land on which the State Legislative Building is situated:
  a. When the General Assembly is in regular or extra session; and
  b. On other days on which one or more standing committees of either or both houses of the General Assembly are meeting and the Legislative Services Officer determines that additional parking is needed for the functioning of the General Assembly and files notice of the committee's or committees' meetings and his finding that additional parking is needed in the office of the Secretary of State and that of Clerk of the Superior Court of Wake County. (1973, c. 99, s. 1; 1975, c. 145, s. 3; 1981, c. 772, ss. 3, 4; 1991 (Reg. Sess., 1992), c. 1044,

s. 7(a); 1993, c. 539, s. 913; 1994, Ex. Sess., c. 24, s. 14(c); 1996, 2nd Ex. Sess., c. 18, ss. 8.1, 8(c).)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — Session Laws 1996, Second Extra Session, c. 18, ss. 8(c) and 8.1, effective July 1, 1996, substituted "Legislative Services Officer" for "Legislative Administrative Officer" in subsection (b) and in subdivision (d)(2)b.; deleted "and the area" from the end of subdivision (d)(1)a.; added the subdivision (d)(1)a1. designation, and in subdivision (d)(1)a1. added "The areas," deleted "Lane" following "Wilmington," and substituted "it" for "the State Legislative Building"; added subdivision (d)(1)a2.; and deleted "Lane" following "Wilmington" in subdivision (d)(2).

§ 120-32.1A. Evacuation of legislative buildings and grounds.

The Chief of the General Assembly Police, or the Chief's designee, shall exercise at all times those means that, in the opinion of the Chief, or the Chief's designee, may be effective in protecting the State legislative buildings and grounds and the persons within those buildings and grounds from fire, bombs, bomb threats, or any other emergency or potentially hazardous conditions, including both the ordering and control of the evacuation of those buildings and grounds. The Chief, or the Chief's designee, may employ the assistance of other available law enforcement agencies and emergency agencies to aid and assist in evacuations of the legislative buildings and grounds. (1997-112, s. 2.)

Editor's Note. — Session Laws 1997, c. 112, s. 3 made this section effective May 29, 1997.

§ 120-33. Duties of enrolling clerk.

(a) All bills passed by the General Assembly shall be enrolled for ratification under the supervision of the enrolling clerk.

(b) Prior to enrolling any bill, the enrolling clerk shall substitute the corresponding Arabic numeral(s) for any date or section number of the General Statutes or of any act of the General Assembly which is written in words. The enrolled bill shall have the word "RATIFIED" following the bill number.

(c) All bills shall be typewritten and carefully proofread before enrollment.

(d) Upon ratification of an act or joint resolution, the enrolling clerk shall present one true ratified copy:

(1) To the Governor of any act except acts not required to be presented to the Governor under Article II, Section 22 of the Constitution of North Carolina; and

(2) To the Secretary of State of:
  a. Acts not required to be presented to the Governor under Article II, Section 22 of the Constitution of North Carolina; and
  b. Joint resolutions.

In the case of any bill presented to the Governor, the enrolling clerk shall write upon the bill the time and date presented to the Governor.

(d1) The enrolling clerk shall present to the Secretary of State one true ratified copy of:

(1) Any bill which has become law with the approval of the Governor as provided by G.S. 120-29.1(a);
(2) Any bill which has become law without the approval of the Governor as provided by G.S. 120-29.1(b); and
(3) Any bill which has become law notwithstanding the objections of the Governor, as provided by G.S. 120-29.1(c).

(d2) No bill required to be presented to the Governor under Article II, Section 22 of the Constitution of North Carolina shall be so presented until the next business day after the bill was ratified, unless expressly ordered by that house where such bill was ordered enrolled. For the purpose of this section, a business day is a weekday other than one on which there is both a State employee holiday and neither house is in session. No bill required to be presented to the Governor under Article II, Section 22 of the North Carolina Constitution shall be recalled from the Enrolling Clerk or Governor after it has been ratified but before it has been acted upon by the Governor except by joint resolution.

(e) Repealed by Session Laws 1995, c. 20, s. 1, effective January 1, 1997, contingent on approval of constitutional amendments.

(f) The enrolling clerk upon completion of duties after each session shall deposit the original bills and resolutions enrolled for ratification with the Secretary of State. (1969, c. 1184, s. 3; 1995, c. 20, s. 1; 1997-1, s. 1.)

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1995 amendment, effective on or after January 1, 1997, if constitutional amendments proposed by 1995, c. 5, ss. 1-2 are approved, added the last sentence in subsection (b); rewrote subsection (d); added subsections (d1) and (d2); deleted subsection (e) regarding the duty of the enrolling clerk to furnish each member of the General Assembly a conformed copy of all laws and joint resolutions showing the chapter number or joint resolution number; and in subsection (f) deleted "his" following "completion of" and deleted "by him" following "for ratification".

The 1997 amendment, effective February 27, 1997, in subsection (d2), substituted "the next business day after the bill was ratified," for "the time for moving a reconsideration shall have expired" and added the last two sentences.

§ 120-34. Printing of session laws.

(a) The Legislative Services Commission shall publish all laws and joint resolutions passed at each session of the General Assembly. The laws and joint resolutions shall be kept separate and indexed separately. Each volume shall contain a certificate from the Secretary of State stating that the volume was printed under the direction of the Legislative Services Commission from ratified acts and resolutions on file in the Office of the Secretary of State. The Commission may publish the Session Laws and House and Senate

Journals of extra and special sessions of the General Assembly in the same volume or volumes as those of regular sessions of the General Assembly. In printing, the signatures of the presiding officers and the Governor shall be omitted.

The enrolling clerk or the Legislative Services Office shall assign to each bill that becomes law a number in the order the bill became law, and the laws shall be printed in the Session Laws in that order. The number shall be preceded by the phrase "Session Law" or the letters "S.L." followed by the calendar year it was ordered enrolled, followed by a hyphen and the sequential law number. Laws of Extra Sessions shall so indicate. In the case of any bill required to be presented to the Governor, and which became law, the Session Laws shall carry, below the date of ratification, editorial notes as to what time and what date the bill became law. In any case where the Governor has returned a bill to the General Assembly with objections, those objections shall be printed verbatim in the Session Laws, regardless of whether or not the bill became law notwithstanding the objections.

(b) All index references with respect to the session laws shall refer to the Chapter numbers of such laws in lieu of page numbers, and all index references to resolutions shall refer to the resolution numbers of the resolutions in lieu of page numbers, to the end that the indexes shall thereby be made consistent with the index to the General Statutes which refers to the section numbers and not to page numbers.

(c) There shall be printed not more than 2,500 volumes of the session laws and 600 volumes of the journals of each house of each session of the General Assembly, all of which shall be bound, and delivered to the Secretary of State for distribution by him under the provisions of G.S. 147-45, G.S. 147-46.1, G.S. 147-48 and other applicable statutes. (1969, c. 1184, s. 4; 1971, c. 685, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 179; 1995, c. 20, s. 12; 1997-456, s. 45.)

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1995 amendment, effective on or after January 1, 1997, if constitutional amendments proposed by 1995, c. 5, ss. 1-2 are approved, in subsection (a), in the last sentence of the first paragraph inserted "and the Governor" and added the second paragraph.

The 1997 amendment, effective August 29, 1997, substituted "phrase 'Session Law' or the letters 'S.L'" for "letters 'S.L.'" in the second sentence of the second paragraph of (a).

ARTICLE 7A.

Fiscal Research Division.

§ 120-36.6. Legislative Fiscal Research staff participation.

Legislative fiscal research staff members may attend all meetings of the Advisory Budget Commission and all hearings conducted by or for the Commission, and may accompany the Commission to inspect the facilities of the State. The Legislative Services Officer shall designate a member of the Fiscal Research staff, and a member of the General Research or Bill Drafting staff who may attend all meetings of the Board of Awards and Council of State, unless the Board or Council has voted to exclude them from the specific meeting, provided that no final action may be taken while they are so excluded. The Legislative Services Officer and the Director of Fiscal Research shall be notified of all such meetings, hearings and trips in the same manner and at the same time as notice is given to members of the Board, Commission or Council. The Legislative Services Officer and the Director of Fiscal Research shall be provided with a copy of all reports, memoranda, and other informational material which are distributed to the members of the Board, Commission, or Council; these reports, memoranda and materials shall be delivered to the Legislative Services Officer and the Director of Fiscal Research at the same time that they are distributed to the members of the Board, Commission, or Council. (1971, c. 659, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 177.1; 1996, 2nd Ex. Sess., c. 18, s. 8(d).)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, substituted "Legislative Services Officer" for "Legislative Administrative Officer" in the second sentence.

§ 120-36.8. Certification of legislation required by federal law.

(a) Every bill and resolution introduced in the General Assembly proposing any change in the law which purports to implement federal law or to be required or necessary for compliance with federal law, or on which is conditioned the receipt of federal funds shall have attached to it at the time of its consideration by the General Assembly a certification prepared by the Fiscal Research Division, in consultation with the Bill Drafting and Research Divisions, identifying the federal law requiring passage of the bill or resolution. The certification shall contain a statement setting forth the reasons why the bill or resolution is required by federal law. If the bill or resolution is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion. No comment or opinion shall be included in the certification with regard to the merits of the measure for which the certification is prepared. However, technical and mechanical defects may be noted.

(b) The sponsor of each bill or resolution to which this section applies shall present a copy of the bill or resolution with the request for certification to the Fiscal Research Division. Upon receipt of the request and the copy of the bill or resolution, the Fiscal Research Division shall consult with the Bill Drafting and Research Divisions, and may consult with the Office of State Budget and Management or any State agency on preparation of the certification as promptly as possible. The Fiscal Research Division shall prepare the certification and transmit it to the sponsor within two weeks after the request is made, unless the sponsor agrees to an extension of time.

(c) This certification shall be attached to the original of each proposed bill or resolution that is reported favorably by any committee of the General Assembly, but shall be separate from the bill or resolution and shall be clearly designated as a certification. A certification attached to a bill or resolution pursuant to this section is not a part of the bill or resolution and is not an expression of legislative intent proposed by the bill or resolution.

(d) If a committee of the General Assembly reports favorably a proposed bill or resolution with an amendment proposing any change in the law which purports to implement federal law or to be required or necessary for compliance with federal law, the chair of the committee shall obtain from the Fiscal Research Division and attach to the amended bill or resolution a certification as provided in this section. (1995, c. 415, s. 8.)

Editor's Note. — Session Laws 1995, c. 415, s. 9, made this section effective October 1, 1995.

ARTICLE 8.

Elected Officers.

§ 120-37. Elected officers; salaries; staff.

(a) At the convening of the first session of the General Assembly following each biennial election of members of the General Assembly, each house shall elect a principal clerk for a term of two years, subject to the condition that each officer shall serve at the pleasure of the house that elected him or her and until his or her successor is elected. The reading clerk and sergeant-at-arms of the Senate shall serve for terms of two years, subject to the condition that each serves at the pleasure of the Senate and until the officer's successor is elected. The reading clerk and sergeant-at-arms of the House of Representatives shall serve as provided in the rules of the House.

(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of two hundred fifty-eight dollars ($258.00) per week plus subsistence at the same daily rate provided for members of the General Assembly, plus mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized by the Legislative Services Commission. The reading clerks shall serve during sessions only.

(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of fifty-nine thousand eight hundred sixty-one dollars ($59,861) payable monthly. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph.

(d) The Legislative Services Commission may authorize additional full-time staff employees of the office of each principal clerk. The Speaker may assign to the Principal Clerk of the House additional duties for the periods between sessions and during recesses of the General Assembly. The President pro tempore of the Senate may assign to the Principal Clerk of the Senate additional duties for the periods between sessions and during recesses of the General Assembly.

(e) The principal clerks and the sergeants-at-arms may, upon authorization of the Legislative Services Commission, employ temporary assistants to prepare for each legislative session, serve during the session, and perform necessary duties following adjournment.

(f) Following adjournment sine die of each session of the General Assembly, each principal clerk shall retain in his office for a period of two years every bill and resolution considered by but not enacted or adopted by his house, together with the calendar books and other records deemed worthy of retention. At the end of two years, these materials shall be turned over to the Division of Archives and History of the Department of Cultural Resources for ultimate retention or disposition. (1969, c. 1184, s. 7; 1977, 2nd Sess., c. 1278; 1979, c. 838, s. 82; 1979, 2nd Sess., c. 1137, s. 8; 1981, c. 1127, s. 9; 1983, c. 761, s. 197; 1983 (Reg. Sess., 1984), c. 1034, s. 208; c. 1116, s. 110; 1985, c. 479, ss. 205, 207; c. 757, s. 189; 1985 (Reg. Sess., 1986), c. 1014, ss. 30, 31; 1987, c. 738, ss. 16, 17; 1987 (Reg. Sess., 1988), c. 1086, ss. 10, 11; c. 1100, s. 16(c); 1989, c. 752, ss. 27, 28; 1991, c. 756, s. 34; 1991 (Reg. Sess., 1992), c. 900, ss. 36, 37; 1993, c. 321, ss. 53, 54; 1993 (Reg. Sess., 1994), c. 769, ss. 7.6, 7.7; 1995, c. 507, ss. 7.9, 7.10; 1996, 2nd Ex. Sess., c. 18, ss. 28.8, 28.7; 1997-443, ss. 33.13, 33.14.)

Editor's Note. —

Session Laws 1995, c. 358, s. 2(a), as amended by Session Laws 1995, c. 437, s. 1, and by Session Laws 1995, c. 467, s. 1, provides that the salaries established by Session Laws 1993, c. 769, ss. 7.6 and 7.7, shall remain until July 28, 1995, at the level set by or under that section as of June 30, 1995; and that no State employee or officer may prior to July 28, 1995, receive a merit increase or annual increment.

Session Laws 1995, c. 507, s. 1.1, provides that that act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1996, Second Extra Session, c. 18, ss. 28.7 and 28.8, effective September 1, 1996, substituted "fifty-seven thousand five hundred fifty-nine dollars ($57,559)" for "fifty-five thousand eighty dollars ($55,080)" in subsection (c); and substituted "two hundred forty-eight dollars ($248.00) per week" for "two hundred thirty-seven dollars ($237.00) per week" in subsection (b).

Session Laws 1997-443, ss. 33.13 and 33.14, effective July 1, 1997, substituted "fifty-nine thousand eight hundred sixty-one dollars ($59,861)" for "fifty-seven thousand five hundred fifty-nine dollars ($57,559)" in subsection (c); and substituted "two hundred fifty-eight dollars ($258.00) per week" for "two hundred forty-eight dollars ($248.00) per week" in subsection (b).

ARTICLE 11.

Legislative Intern Program.

§ 120-56. Legislative Intern Program Council created.

There is hereby created the Legislative Intern Program Council which shall consist of the President Pro Tempore of the Senate or the designee of that person, the Speaker of the House of Representatives or the designee of that person, and the chairman of the department of politics at North Carolina State University. Such Council shall establish a program for legislative interns for both houses of the General Assembly. (1969, c. 32; 1995, c. 490, s. 29.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

ARTICLE 12.

Commission on Children with Special Needs.

§ 120-65. Assistance of Department of Health and Human Services, State Board of Education, and Department of Public Instruction.

The Department of Health and Human Services, the State Board of Education, and the Department of Public Instruction are vital departments of State government to assist especially the Commission and to furnish it with information, and to the extent permitted by the Commission, to participate actively in the work and deliberations of the Commission. (1973, c. 1293, s. 5; 1993, c. 522, s. 7; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

ARTICLE 12A.

Joint Legislative Utility Review Committee.

§ 120-70.2. (For applicability, see note) Appointment of members and organization.

The Joint Committee shall consist of ten sitting members of the General Assembly. Five shall be appointed by the President Pro Tempore of the Senate from the membership of the Senate and five shall be appointed by the Speaker of the House of Representatives from the membership of the House. Members will serve at the pleasure of their appointing officer and any vacancies occurring on the Joint Committee shall be filled by the appointing officer of the appropriate house. The President Pro Tempore of the Senate shall designate one Senator to serve as cochairman and the Speaker of the House of Representatives shall designate one Representative to serve as cochairman. A quorum shall consist of six members. (1985, c. 499, s. 1; 1991, c. 739, s. 1; 1995, c. 440, s. 1; c. 542, s. 20.5.)

Editor's Note. — Session Laws 1995, c. 542, s. 1, provides that that act shall be known as "The Studies Act of 1995".

For applicability of this section as enacted, see the main pamphlet.

ARTICLE 12C.

Joint Select Committee on Low-Level Radioactive Waste.

§ 120-70.33. Powers and duties.

The Joint Select Committee shall have the following powers and duties:

(1) To study alternatives available to the State for dealing with low-level radioactive waste and the ramifications of each of those alternatives;

(2) To evaluate actions of the North Carolina Low-Level Radioactive Waste Management Authority, its operator, and other persons with whom the Authority contracts;

(3) To evaluate actions of the Radiation Protection Commission, the Division of Radiation Protection of the Department of Environment and Natural Resources, and of any other board, commission, department, or agency of the State or local government as such actions relate to low-level radioactive waste management;

(4) To receive, review, and evaluate reports and recommendations submitted to the General Assembly by the North Carolina Low-Level Radioactive Waste Management Authority and the Inter-Agency Committee on Low-Level Radioactive Waste;

(5) To review and evaluate changes in federal law and regulations, relevant court decisions, and changes in technology affecting low-level radioactive waste management;

(6) To review existing and proposed State law and rules affecting low-level radioactive waste management and to determine whether any modification of law or rules is in the public interest;

(7) To make reports and recommendations, including draft legislation, to the General Assembly from time to time as to any matter relating to the powers and duties set out in this section; and

(8) **(For applicability see note)** To undertake such additional studies as it deems appropriate or as may from time to time be requested by the President Pro Tempore of the Senate, the Speaker of the House of Representatives, either house

of the General Assembly, the Legislative Research Commission, the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, or the Joint Legislative Utility Review Committee, and to make such reports and recommendations to the General Assembly regarding such studies as it deems appropriate. (1987 (Reg. Sess., 1988), c. 1100, s. 3.1; 1991, c. 342, s. 5; c. 739, s. 4; 1993, c. 501, s. 11; 1997-443, s. 11A.119(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 120-70.36. Staffing.

The Legislative Services Officer shall assign as staff to the Joint Select Committee professional employees of the General Assembly, as approved by the Legislative Services Commission. Clerical staff shall be assigned to the Joint Select Committee through the offices of the Supervisor of Clerks of the Senate and Supervisor of Clerks of the House of Representatives. The expenses of employment of clerical staff shall be borne by the Joint Select Committee. (1987 (Reg. Sess., 1988), c. 1100, s. 3.1; 1996, 2nd Ex. Sess., c. 18, s. 8(e).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, substituted "Legislative Services Officer" for "Legislative Administrative Officer" in the first sentence.

ARTICLE 12D.

Environmental Review Commission.

§ 120-70.41. Commission established.

Editor's Note. — Session Laws 1995, c. 542, s. 1, provides that that act shall be known as "The Studies Act of 1995".

Session Laws 1995, c. 542, s. 7.1, provides that the Environmental Review Commission shall study the organization, powers, duties, and functions of the boards, commissions, and councils within State government that currently exercise environmental rule making to determine if those functions should be consolidated into a full-time Environmental Commission.

§ 120-70.42. (For applicability see note) Membership; cochairs; vacancies; quorum.

The Environmental Review Commission shall consist of six Senators appointed by the President Pro Tempore of the Senate, six

Representatives appointed by the Speaker of the House of Representatives, who shall serve at the pleasure of their appointing officer, the Chair of the Senate Committee on Environment and Natural Resources, and the Chair of the House of Representatives Committee on the Environment. The President Pro Tempore of the Senate shall designate one Senator to serve as cochair and the Speaker of the House of Representatives shall designate one Representative to serve as cochair. Any vacancy which occurs on the Environmental Review Commission shall be filled in the same manner as the original appointment. A quorum of the Environmental Review Commission shall consist of eight members. (1987 (Reg. Sess., 1988), c. 1100, s. 4.1; 1989, c. 727, s. 139; 1991, c. 739, s. 5; 1997-31, s. 1.)

Editor's Note. —
For note on applicability, see the main pamphlet.

Effect of Amendments. — The 1997 amendment, effective April 17, 1997 and applicable to any appointments for terms beginning on or after that date, substituted "cochairs" for "cochairmen" in the section heading, substituted "six" for "five" twice, "Chair" for "Chairman" twice, "cochair" for "cochairman" twice; and "eight" for "seven".

§ 120-70.43. Powers and duties.

(a) The Environmental Review Commission shall have the following powers and duties:

(1) To evaluate actions of all boards, commissions, departments, and other agencies of the State and local governments as such actions relate to the environment or protection of the environment, including but not limited to an evaluation of:
   a. Benefits of each program relative to costs;
   b. Achievement of program goals;
   c. Use of measures by which the success or failure of a program can be measured; and
   d. Conformity with legislative intent;

(2) To study on a continuing basis the organization of State government as it relates to the environment or to the protection of public health and the environment, including but not limited to:
   a. Improvements in administrative structure, practices, and procedures;
   b. Increased integration and coordination of programs and functions;
   c. Increased efficiency in budgeting and use of resources;
   d. Efficient administration of licensing, permitting, and grant programs;
   e. Prompt, effective response to environmental emergencies;
   f. Opportunities for effective citizen participation; and
   g. Broadening of career opportunities for professional staff;

(3) To make any recommendations it deems appropriate regarding the reorganization and consolidation of environmental regulatory agencies and the recodification of statutes relating to the environment, including but not limited to:
   a. Ways in which agencies may operate more efficiently and economically;

b. Ways in which agencies can provide better services to the State and to the people; and

c. Instances in which functions of agencies are duplicative, overlapping, incomplete in scope or coverage, fail to accomplish legislative objectives, or for any other reason should be redefined or redistributed;

(4) To review and evaluate changes in federal law and regulations, relevant court decisions, and changes in technology affecting the environment or protection of the environment;

(5) To review existing and proposed State law and rules affecting the environment or protection of the environment and to determine whether any modification of law or rules is in the public interest;

(6) To make reports and recommendations, including draft legislation, to the General Assembly from time to time as to any matter relating to the powers and duties set out in this section; and

(7) **(For applicability see note)** To undertake such additional studies as it deems appropriate or as may from time to time be requested by the President Pro Tempore of the Senate, the Speaker of the House of Representatives, either house of the General Assembly, the Legislative Research Commission, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Utility Review Committee, or the Joint Select Committee on Low-Level Radioactive Waste and to make such reports and recommendations to the General Assembly regarding such studies as it deems appropriate; provided that the Environmental Review Commission shall not undertake any study which the General Assembly has assigned to another legislative commission or committee.

(b) The Environmental Review Commission may continue the study of environmental agency consolidation and reorganization. The study of environmental agency consolidation shall include, but is not limited to:

(1) Monitoring the implementation of Session Laws 1989, c. 727;

(2) Evaluation of the organization, programs, and operation of the Department of Environment and Natural Resources;

(3) Evaluation of the organization, functions, powers, and duties of the components of the Department of Environment and Natural Resources, including boards, commissions, councils, and regional offices; and

(4) Recodification of the General Statutes relating to the environment and environmental agencies.

(c) In addition to its general powers and duties, the Environmental Review Commission shall have the following powers and duties with respect to hazardous waste management:

(1) To study the current and projected need for hazardous waste treatment, storage, and disposal capacity in the State in light of anticipated generation of hazardous waste and alternatives for hazardous waste treatment and disposal;

(2) To evaluate the potential for the development of additional hazardous waste treatment, storage, and disposal capacity by the private sector;

(3) To study the necessity for and scope of hazardous waste treatment, storage, and disposal facilities which are sited, owned, or operated by the State;

(4) To review progress in securing a volunteer county to host a hazardous waste treatment facility;

(5) To study incentives and compensation for the community which hosts, either voluntarily or involuntarily, a hazardous waste treatment facility, including any additional incentives and compensation which may be needed, whether there should be differential compensation for a volunteer county, options for use of funds by local governments, distribution of compensation among local governments, and methods of providing flexibility in the development of an incentives and compensation package for a particular local community;

(6) To review progress in developing interstate agreements for the treatment, storage, and disposal of hazardous waste;

(7) To assist in the development of cooperative, comprehensive regional approach to hazardous waste treatment and disposal;

(8) To examine criteria and procedures for the selection of sites for hazardous waste treatment, storage, and disposal facilities which are adopted by the Hazardous Waste Management Commission and determine whether any modification is needed;

(9) To analyze existing State law governing the Hazardous Waste Management Commission and determine whether any changes are needed;

(10) To study the capacity assurance requirement under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. 9601 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended as it relates to the continued eligibility of North Carolina for remedial actions under Superfund;

(11) To study alternatives available to the State for dealing with hazardous waste and the ramifications of those alternatives; and

(12) To receive and evaluate reports of every State agency, board, and commission which has any power or duty with respect to hazardous waste management. (1987 (Reg. Sess., 1988), c. 1100, s. 4.1; 1989, c. 168, s. 46(b); c. 727, s. 225(a); 1991, c. 739, s. 6; 1991 (Reg. Sess., 1992), c. 990, s. 4; 1997-443, s. 11A.119(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

For applicability note referred to in subdivision (a)(7), see the main pamphlet.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 120-70.46. Staffing.

The Legislative Services Officer shall assign as staff to the Environmental Review Commission professional employees of the General Assembly, as approved by the Legislative Services Commission. Clerical staff shall be assigned to the Environmental Review Commission through the offices of the Supervisor of Clerks of the Senate and Supervisor of Clerks of the House of Representatives. The expenses of employment of clerical staff shall be borne by the Environmental Review Commission. (1987 (Reg. Sess., 1988), c. 1100, s. 4.1; 1996, 2nd Ex. Sess., c. 18, s. 8(f).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, substituted "Legislative Services Officer" for "Legislative Administrative Officer" in the first sentence.

Article 12E.

Joint Legislative Transportation Oversight Committee.

§ 120-70.50. Creation and membership of Joint Legislative Transportation Oversight Committee.

Editor's Note. — Session Laws 1989, c. 692, s. 8.4 as amended by Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 7, effective upon the certification of a favorable vote on the bonds by the State Board of Elections to the Secretary of State, provides that when contracts for all projects specified in Article 14 of Chapter 136 have been let and sufficient revenue has been accumulated to pay the contracts, the Secretary of Transportation shall certify this occurrence by letter to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of State, which contingency is not expected to occur until some years after the date of enactment. The proceeds of bonds and notes issued pursuant to the State Highway Bond Act shall not be included as revenues accumulated to pay the contracts for the projects specified in Article 14 of Chapter 136. The changes will not become effective until the State Treasurer certifies by letter to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of State that all of the bonds and notes issued pursuant to the State Highway Bond Act of 1996 have been retired or provision for their retirement has been made. This Article 12E shall be repealed pursuant to s. 8.4 of c. 692, effective the first day of the calendar quarter following the date the Secretary sends the letter, unless there is less than 30 days between that date and the first day of the following quarter, in which case, the repeal of Article 12E will become effective the first day of the second calendar quarter following the date the letter is sent.

§ 120-70.52. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Transportation Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through 120-19.4.

(c) The Committee shall be funded by appropriations made to the Highway Trust Fund and allocated to the Intrastate System projects. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (1989, c. 692, s. 1.2; 1993, c. 321, s. 169.2(c); 1996, 2nd Ex. Sess., c. 18, s. 8(g).)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, substituted "Legislative Services Officer" for "Legislative Administrative Officer" in subsection (c).

ARTICLE 12F.

Joint Legislative Commission on Seafood and Aquaculture.

§ 120-70.62. Powers and duties.

The Commission shall have the following powers and duties:

(1) To monitor and study the current seafood industry in North Carolina including studies of the feasibility of increasing the State's production, processing, and marketing of seafood;

(2) To study the potential for increasing the role of aquaculture in all regions of the State;

(3) To evaluate the feasibility of creating a central permitting office for fishing and aquaculture matters;

(4) To evaluate actions of the Marine Fisheries Division of the Department of Environment and Natural Resources, the Wildlife Resources Commission of the Department of Environment and Natural Resources and of any other board, commission, department, or agency of the State or local government as such actions relate to the seafood and aquaculture industries;

(5) To make recommendations regarding regulatory matters relating to the seafood and aquaculture industries including, but not limited to:

a. Increasing the State's representation and decision-making ability by dividing the State between the Atlantic and South Atlantic regions of the National Division of Marine Fisheries; and

b. Evaluating the necessity to substantially increase penalties for trespass and theft of shellfish and other aquaculture products;

(6) To review and evaluate changes in federal law and regulations, relevant court decisions, and changes in technology affecting the seafood and aquaculture industries;

(7) To review existing and proposed State law and rules affecting the seafood and aquaculture industries and to determine whether any modification of law or rules is in the public interest;

(8) To make reports and recommendations, including draft legislation, to the General Assembly from time to time as to any matter relating to the powers and duties set out in this section; and

(9) To undertake such additional studies as it deems appropriate or as may from time to time be requested by the President of the Senate, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, either house of the General Assembly, the Legislative Research Commission, or the Joint Legislative Commission on Governmental Operations, and to make such reports and recommendations to the General Assembly regarding such studies as it deems appropriate. (1989, c. 802, s. 12.1; 1997-443, s. 11A.119(a).)

Editor's Note. — Session Laws 1997-400, s. 1.2, provides that the State Auditor shall conduct a performance audit, including a detailed operational review, of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources, including an assessment of the capacity of the Division of Marine Fisheries to effectively implement the provisions of Part V of that act, that the performance audit report shall be delivered to the Joint Legislative Commission on Seafood and Aquaculture no later than February 1, 1998, and that the Joint Legislative Commission on Seafood and Aquaculture shall review the performance audit and make a specific recommendation to the 1998 Session of the 1997 General Assembly as to whether the provisions of Part V of that act should be implemented.

Session Laws 1997-400, s. 1.3, provides that the Joint Legislative Commission on Seafood and Aquaculture shall study issues relating to licensing coastal recreational fishing and shall present its findings and recommendations to the 1998 Regular Session of the General Assembly.

Session Laws 1997-400, s. 1.4, provides that the Joint Legislative Commission on Seafood and Aquaculture shall study issues relating to the establishment of a crew license for persons working aboard a vessel engaged in the taking of fish for sale and shall present its findings and recommendations to the 1998 Regular Session of the General Assembly.

Session Laws 1997-400, s. 1.5, provides that the Joint Legislative Commission on Seafood and Aquaculture shall study issues relating to the enhancement and management of shellfish resources and shall develop a set of comprehensive recommendations for the enhancement and management of the shellfish resources of the state and shall present its findings and recommendations to the 1998 Regular Sesion of the General Assembly.

Session Laws 1997-400, s. 1.6, provides that the Joint Legislative Commission on Seafood and Aquaculture shall study issues relating to whether either a limited shellfish license or an exemption from shellfish license requirements should be established to allow students under the age of 18 to take and sell shellfish during the summer months and shall present its findings and recommendations to the 1998 Regular Session of the General Assembly.

Session Laws 1997-400, s. 1.7, provides that the Joint Legislative Commission on Seafood and Aquaculture shall study the establishment of a comprehensive State program to acquire, preserve, and restore habitats critical to marine and estuarine fisheries and shall present its findings and recommendations to the 1998 Regular Session of the General Assembly.

Session Laws 1997-400, s. 1.8, provides that the Joint Legislative Commission on Seafood and Aquaculture shall study procedures and rules used by the Appeals Panel in the review of license applications. The appeals Panel shall prepare and submit a detailed summary of its activities, including all decisions to issue or deny licenses to the Joint Legislative Commission on Seafood and Aquaculture no later than December 1, 1997, and shall present its findings and recommendations to the 1998 Regular Session of the General Assembly.

Session Laws 1997-400, s. 6.11, provides that Cochairs of the Joint Legislative Commission on Seafood and Aquaculture shall appoint an Advisory Committee to the Commission to be composed of persons who represent the broad range of interests involved in marine fisheries issues.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 120-70.65. Staffing.

The Legislative Services Officer shall assign as staff to the Commission professional employees of the General Assembly, as approved by the Legislative Services Commission. Clerical staff shall be assigned to the Commission through the Offices of the Supervisor of Clerks of the Senate and Supervisor of Clerks of the House of Representatives. The expenses of employment of clerical staff shall be borne by the Commission. (1989, c. 802, s. 12.1; 1996, 2nd Ex. Sess., c. 18, s. 8(h).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, substituted "Legislative Services Officer" for "Legislative Administrative Officer" in the first sentence.

Article 12G.

Commission on the Family.

§§ 120-70.70 through 120-70.75: Repealed by Session Laws 1997-443, s. 12.15, effective August 28, 1997.

ARTICLE 12H.

Joint Legislative Education Oversight Committee.

§ 120-70.80. Creation and membership of Joint Legislative Education Oversight Committee.

The Joint Legislative Education Oversight Committee is established. The Committee consists of 18 members as follows:

(1) Nine members of the Senate appointed by the President Pro Tempore of the Senate, at least two of whom are members of the minority party; and

(2) Nine members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 1991 General Assembly. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until his successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (1989 (Reg. Sess., 1990), c. 1066, s. 115; 1997-456, s. 46(a); 1997-495, s. 91(a).)

Editor's Note. — Session Laws 1997-495, s. 91(c), effective September 11, 1997, provides that the additional appointments authorized by s. 90 are for terms expiring on convening of the 1999 General Assembly.

Effect of Amendments. — Session Laws 1997-456, s. 46(a), effective August 29, 1997, inserted "Oversight" in the catchline and in the first sentence.

Session Laws 1997-495, s. 91(a), effective September 11, 1997, substituted "18 members" for "16 members" in the introductory language of the first paragraph, and "Nine" for "Eight" in each subdivision of the first paragraph.

§ 120-70.81. Purpose and powers of Committee.

Editor's Note. — The School Improvement and Accountability Act of 1989, referred to in subdivision (a)(2), as this section appears in the main pamphlet, is Session Laws 1989, c. 788.

§ 120-70.82. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Education Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is 10 members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (1989 (Reg. Sess., 1990), c. 1066, s. 115; 1996, 2nd Ex. Sess., c. 18, s. 8(i); 1997-456, s. 46(b); 1997-495, s. 91(b).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1997-495, s. 91(c), effective September 11, 1997, provides that the additional appointments authorized by s. 90 are for terms expiring on convening of the 1999 General Assembly.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, substituted "Legislative Services Officer" for "Legislative Administrative Officer" in subsection (c).

Session Laws 1997-456, s. 46(b), effective August 29, 1997, inserted "Oversight" in the first sentence of subsection (a).

Session Laws 1997-495, s. 91(b), effective September 11, 1997, substituted "10 members" for "nine members" in the first sentence of subsection (b).

§ 120-70.83. Additional powers.

The Joint Legislative Education Oversight Committee, while in discharge of official duties, shall have access to any paper or document, and may compel the attendance of any State official or employee before the Committee or secure any evidence under G.S. 120.19. In addition, G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Committee as if it were a joint committee of the General Assembly. (1997-18, s. 15(b).)

Editor's Note. — Session Laws 1995, c. 18, s. 15, made this section effective April 11, 1997.

ARTICLE 12I.

Joint Legislative Oversight Committee on Early Childhood Education and Development Initiatives.

§§ 120-70.90 through 120-70.92: Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 24.29(g), effective July 1, 1996.

Editor's Note. — G.S. 120-70.92 was amended by Session Laws 1996, Second Extra Session, c. 18, s. 8(j), to substitute "Legislative Services Officer" for "Legislative Administrative Officer" in subsection (c), effective July 1, 1996. Because of the repeal of this section, the amendment is not set out.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

ARTICLE 12J.

Joint Legislative Corrections and Crime Control Oversight Committee.

§ 120-70.93. Creation and membership of Joint Legislative Corrections and Crime Control Oversight Committee.

The Joint Legislative Corrections and Crime Control Oversight Committee is established. The Committee consists of 16 members as follows:

(1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least two of whom are members of the minority party; and

(2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 1995 General Assembly. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until his successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (1994, Ex. Sess., c. 24, s. 49(a); 1997-443, s. 21.4(a).)

Editor's Note. —

Session Laws 1997-443, s. 21.14(f), provides that all reports directed by that act to be made to the Joint Legislative Corrections Oversight Committee shall be made to the Joint Legislative Corrections and Crime Control Oversight Committee.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, inserted "and Crime Control" in the Article heading, in the catchline, and in the first sentence of this section.

§ 120-70.94. Purpose and powers of Committee.

(a) The Joint Legislative Corrections and Crime Control Oversight Committee shall examine, on a continuing basis, the correctional and law enforcement systems in North Carolina, in order to make ongoing recommendations to the General Assembly on ways to improve the correctional and law enforcement systems and to assist those systems in realizing their objectives of protecting the public and of punishing and rehabilitating offenders. In this examination, the Committee shall:

(1) Study the budget, programs, and policies of the Departments of Correction and Crime Control and Public Satfey, to determine ways in which the General Assembly may improve the effectiveness of those Departments;

(2) Examine the effectiveness of the Department of Correction in implementing the public policy stated in G.S. 148-26 of providing work assignments and employment for inmates as a means of reducing the cost of maintaining the inmate population while enabling inmates to acquire or retain skills and work habits needed to secure honest employment after their release;

(2a) Examine the effectiveness of the Department of Crime Control and Public Safety in implementing the duties and responsibilities charged to the Department in G.S. 143B-474 and the overall effectiveness and efficiency of law enforcement in the State; and

(3) Study any other matters that the Committee considers necessary.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. (1994, Ex. Sess., c. 24, s. 49(a); 1997-443, s. 21.4(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, rewrote subsection (a).

§ 120-70.95. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Corrections and Crime Control Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (1994, Ex. Sess., c. 24, s. 49(a); 1996, 2nd Ex. Sess., c. 18, s. 8(k); 1997-443, s. 21.4(a).)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, substituted "Legislative Services Officer" for "Legislative Administrative Officer" in subsection (c).

The 1997 amendment, effective August 28, 1997, inserted "and Crime Control" in subsection (a).

ARTICLE 12K.

Joint Legislative Administrative Procedure Oversight Committee.

§ 120-70.100. Creation and membership of Joint Legislative Administrative Procedure Oversight Committee.

(a) The Joint Legislative Administrative Procedure Oversight Committee is established. The Committee consists of 16 members as follows:

(1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least three of whom are members of the minority party.

(2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

(b) Members of the Committee shall serve a term of two years beginning on January 15 of each odd-numbered year. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee. A member continues to serve until the member's successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (1995, c. 507, s. 27.8(a).)

Editor's Note. — Session Laws 1995, c. 507, which enacted this article, in s. 27.8(z) provides that this article is effective December 1, 1995, and is applicable to all rules for which a notice of rule making is published in the North Carolina Register on or after that date and to rule and Building Code changes that are initiated on or after that date and that are not subject to the rule-making procedures set out in Article 2A of Chapter 150B of the General Statutes.

Session Laws 1995, c. 507, s. 1.1, provides that that act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

Session Laws 1995, c. 507, s. 27.8(t), provides: "Notwithstanding G.S. 120-70.100(b), as enacted by subsection (a) of this section, the terms of initial members of the Joint Legislative Administrative Procedure Oversight Committee shall begin upon appointment and shall end on January 15, 1997."

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 120-70.101. Purpose and powers of Committee.

The Joint Legislative Administrative Procedure Oversight Committee has the following powers and duties:

(1) To review rules to which the Rules Review Commission has objected to determine if statutory changes are needed to enable the agency to fulfill the intent of the General Assembly.

(2) To receive reports prepared by the Rules Review Commission containing the text and a summary of each rule approved by the Commission.

(3) To prepare a notebook that contains the administrative rules that have been approved by the Rules Review Commission and reported to the Committee and to notify each member of the General Assembly of the availability of the notebook.

(4) To review State regulatory programs to determine if the programs overlap, have conflicting goals, or could be simplified and still achieve the purpose of the regulation.

(5) To review existing rules to determine if the rules are necessary or if the rules can be streamlined.

(6) To review the rule-making process to determine if the procedures for adopting rules give the public adequate notice of and information about proposed rules.

(7) To review any other concerns about administrative law to determine if statutory changes are needed.

(8) To report to the General Assembly from time to time concerning the Committee's activities and any recommendations for statutory changes. (1995, c. 507, s. 27.8(a); 1996, 2nd Ex. Sess., c. 18, s. 7.10(h).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that that act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective August 3, 1996, substituted "from time to time" for "at the beginning of each regular session" in subdivision (8).

§ 120-70.102. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Administrative Procedure Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Committee may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be paid by the Committee. (1995, c. 507, s. 27.8(a); 1996, 2nd Ex. Sess., c. 18, s. 8(*l*).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that that act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, substituted "Legislative Services Officer" for "Legislative Administrative Officer" in subsection (c).

§ 120-70.103. Exercise of duty to maintain a notebook of approved rules.

With the approval of the Legislative Services Commission, the Joint Legislative Administrative Procedure Oversight Committee may delegate to the Legislative Library the duty to maintain a notebook containing rules approved by the Rules Review Commission. Whether the notebook is maintained by the Committee or by the Legislative Library, rules shall be filed in the notebook in accordance with the numbering system used in the North Carolina Administrative Code. (1995, c. 507, s. 27.8(a).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that that act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

§ 120-70.104: Reserved for future codification purposes.

ARTICLE 12L.

Revenue Laws Study Committee.

§ 120-70.105. Creation and membership of the Revenue Laws Study Committee.

The Revenue Laws Study Committee is established. The Committee consists of 16 members as follows:

(1) Eight members appointed by the President Pro Tempore of the Senate; the persons appointed may be members of the Senate or public members.

(2) Eight members appointed by the Speaker of the House of Representatives; the persons appointed may be members of the House of Representatives or public members.

Terms on the Committee are for two years and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment. Legislative members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until his successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (1997-483, s. 14.1.)

Editor's Note. — Session Laws 1997-483, s. 17.1, made this Article effective July 1, 1997.

Session Laws 1997-483, s. 1, provides that this act shall be known as "The Studies Act of 1997".

§ 120-70.106. Purpose and powers of Committee.

(a) The Revenue Laws Study Committee may:

(1) Study the revenue laws of North Carolina and the administration of those laws.

(2) Review the State's revenue laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, easy to administer, and equitable.

(3) Call upon the Department of Revenue to cooperate with it in the study of the revenue laws.

(4) Report to the General Assembly at the beginning of each regular session concerning its determinations of needed changes in the State's revenue laws.

These powers, which are enumerated by way of illustration, shall be liberally construed to provide for the maximum review by the Committee of all revenue law matters in this State.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. When a recommendation of the Committee, if enacted, would result in an increase or decrease in State revenues, the report of the Committee must include an estimate of the amount of the increase or decrease. (1997-483, s. 14.1.)

§ 120-70.107. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Revenue Laws Study Committee. The Committee shall meet upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) The Committee shall be funded by the Legislative Services Commission from appropriations made to the General Assembly for that purpose. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1 and G.S. 138-5. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (1997-483, s. 14.1.)

§§ 120-70.108, 120-70.109: Reserved for future codification purposes.

Article 12M.

Joint Legislative Health Care Oversight Committee.

§ 120-70.110. Creation and membership of Joint Legislative Health Care Oversight Committee.

There is established the Joint Legislative Health Care Oversight Committee. The Committee consists of 14 members as follows:

(1) Seven members of the Senate appointed by the President Pro Tempore of the Senate, at least three of whom are members of the minority party; and

(2) Seven members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General

Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until the member's successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (1997-443, s. 22.1(b).)

Editor's Note. — Session Laws 1997-443, s. 35.5, made this Article effective July 1, 1997.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

This section was enacted as § 120-70.96 by Session Laws 1997-443, s. 221. It has been recodified at the direction of the Revisor of Statutes.

§ 120-70.111. Purpose and powers of Committee.

(a) The Joint Legislative Health Care Oversight Committee shall review, on a continuing basis, the provision of health care and health care coverage to the citizens of this State, in order to make ongoing recommendations to the General Assembly on ways to improve health care for North Carolinas. To this end, the Committee shall study the delivery, availability, and cost of health care in North Carolina. The Committee may also study other matters related to health care and health care coverage in this State.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. (1997-443, s. 22.1(b).)

Editor's Note. — This section was enacted as § 120-70.97 by Session Laws 1997-443, s. 221. It has been recodified at the direction of the Revisor of Statutes.

§ 120-70.112. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Health Care Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is eight members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (1997-443, s. 22.1(b).)

Editor's Note. — This section was enacted as § 120-70.98 by Session Laws 1997-443, s. 221. It has been recodified at the direction of the Revisor of Statutes.

ARTICLE 13.

Joint Legislative Commission on Governmental Operations.

§ 120-71. Purpose.

Editor's Note. — Session Laws 1997-443, s. 21(b), provides that unless a state statute provides a different forum for review, when a federal law or regulation provides that an individual State application for a grant shall be reviewed by the State legislature or its designated body and at the time of the review the General Assembly is not in session, that application shall be reviewed by the Joint Legislative Commission on Governmental Operations.

§ 120-74. Appointment of members; terms of office.

The Commission shall consist of 30 members. The President pro tempore of the Senate, the Speaker pro tempore of the House, and the Majority Leader of the Senate and the Speaker of the House shall serve as ex officio members of the Commission. The Speaker of the House of Representatives shall appoint 13 members from the House. The President pro tempore of the Senate shall appoint 13 members from the Senate. Vacancies created by resignation or otherwise shall be filled by the original appointing authority. Members shall serve two-year terms beginning and ending on January 15 of the odd-numbered years, except that initial appointments shall begin on July 1, 1975. Members shall not be disqualified from completing a term of service on the Commission because they fail to run or are defeated for reelection. Resignation or removal from the General Assembly shall constitute resignation or removal from membership on the Commission. The terms of the initial members of the Commission shall expire January 15, 1977. (1975, c. 490; 1977, c. 988, s. 1; 1979, c. 932, s. 9; 1981, c. 859, s. 85; 1985, c. 757, s. 142(a)-(c); 1991, c. 72, s. 1; 1995, c. 542, s. 24.1(a); 1997-495, s. 92.)

Editor's Note. — Session Laws 1995, c. 542, s. 1, provides that that act shall be known as "The Studies Act of 1995".

Session Laws 1995, c. 542, s. 24.1(b), provides: "Appointees to the new positions created under this section shall serve initial terms beginning on the date of their appointment and ending January 15, 1997."

Effect of Amendments. — The 1997 amendment, effective September 11, 1997, substituted "30 members" for "26 members" in the first sentence, and substituted "13 members" for "eleven members" in the third and fourth sentences.

§ 120-76. Powers and duties of the Commission.

The Commission shall have the following powers:

(1) To conduct program evaluation studies of the various components of State agency activity as they relate to:
   a. Service benefits of each program relative to expenditures;
   b. Achievement of program goals;

- c. Use of indicators by which the success or failure of a program may be gauged; and
- d. Conformity with legislative intent.

(2) To study legislation which would result in new programs with statewide implications for feasibility and need. These studies may be jointly conducted with the Fiscal Research Division of the Legislative Services Commission.

(3) To study on a continuing basis the implementation of State government reorganization with respect to:
- a. Improvements in administrative structure, practices and procedures;
- b. The relative effectiveness of centralization and decentralization of management decisions for agency operation;
- c. Opportunities for effective citizen participation; and
- d. Broadening of career opportunities for professional staff.

(4) To make such studies and reports of the operations and functions of State government as it deems appropriate or upon petition by resolution of either the Senate or the House of Representatives.

(5) To produce routine written reports of findings for general legislative and public distribution. Special attention shall be given to the presentation of findings to the appropriate committees of the Senate and the House of Representatives. If findings arrived at during a study have a potential impact on either the finance or appropriations deliberations, such findings shall immediately be presented to the committees. Such reports shall contain recommendations for appropriate executive action and when legislation is considered necessary to effect change, draft legislation for that purpose may be included. Such reports as are submitted shall include but not be limited to the following matters:
- a. Ways in which the agencies may operate more economically and efficiently;
- b. Ways in which agencies can provide better services to the State and to the people; and
- c. Areas in which functions of State agencies are duplicative, overlapping, or failing to accomplish legislative objectives, or for any other reason should be redefined or redistributed.

(6) To devise a system, in cooperation with the Fiscal Research Division of the Legislative Services Commission, whereby all new programs authorized by the General Assembly incorporate an evaluation component. The results of such evaluations may be made to the Appropriations Committees at the beginning of each regular session.

(7) To evaluate and approve or deny requests from the Department of Transportation regarding the funding of federally eligible construction projects as provided in the fourth paragraph of G.S. 136-44.2.

(8) The Joint Legislative Commission on Governmental Operations shall be consulted by the Governor before the Governor does any of the following:
- a. Makes allocations from the Contingency and Emergency Fund.
- b. Authorizes expenditures in excess of the total requirements of a purpose or program as enacted by the

General Assembly and as provided by G.S. 143-23(a1)(3), except for trust funds as defined in G.S. 116-36.1(g).

c. Proceeds to reduce programs subsequent to a reduction of ten percent (10%) or more in the federal fund level certified to a department and any subsequent changes in distribution formulas.

d. Takes extraordinary measures under Article III, Section 5(3) of the Constitution to effect necessary economies in State expenditures required for balancing the budget due to a revenue shortfall, including, but not limited to, the following: loans among funds, personnel freezes or layoffs, capital project reversions, program eliminations, and use of reserves. However, if the Committee fails to meet within 10 calendar days of a request by the Governor for its consultation, the Governor may proceed to take the actions he feels are appropriate and necessary and shall then report those actions at the next meeting of the Commission.

e. Approves a new capital improvement project funded from gifts, grants, receipts, special funds, self-liquidating indebtedness, and other funds or any combination of funds for the project not specifically authorized by the General Assembly. The budget for each capital project must include projected revenues in an amount not less than projected expenditures.

Notwithstanding the provisions of this subdivision or any other provision of law requiring prior consultation by the Governor with the Commission, whenever an expenditure is required because of an emergency that poses an imminent threat to public health or public safety, and is either the result of a natural event, such as a hurricane or a flood, or an accident, such as an explosion or a wreck, the Governor may take action under this subsection without consulting the Commission if the action is determined by the Governor to be related to the emergency. The Governor shall report to the Commission on any expenditures made under this paragraph no later than 30 days after making the expenditure and shall identify in the report the emergency, the type of action taken, and how it was related to the emergency. (1975, c. 490; 1981, c. 859, s. 87; 1996, 2nd Ex. Sess., c. 18, s. 7.4(a); 1997-443, s. 7.8(e).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, added subdivision (8).

The 1997 amendment, effective July 1, 1997, in subdivision (8)b. inserted "purpose or" preceeding "program as enacted" and inserted "and as provided by G.S. 143-23(a1)(3)" following "General Assembly".

ARTICLE 14.

Legislative Ethics Act.

Part 1. Code of Legislative Ethics.

§ 120-86. Bribery, etc.

(a) No person shall offer or give to a legislator or a member of a legislator's immediate household, or to a business with which the legislator is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift, favor or service or a promise of future employment, based on any understanding that the legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of the legislator's duties.

(b) It shall be unlawful for the partner, client, customer, or employer of a legislator or the agent of that partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence the legislator in the discharge of the legislator's duties.

(b1) It shall be unlawful for any person, directly or indirectly, to threaten economically another person in order to compel the threatened person to attempt to influence a legislator in the discharge of the legislator's duties.

(c) It shall be unethical for a legislator to contact the partner, client, customer, or employer of another legislator if the purpose of the contact is to cause the partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence that legislator in the discharge of the legislator's duties.

(d) For the purposes of this section, the term "legislator" also includes any person who has been elected or appointed to the General Assembly but who has not yet taken the oath of office.

(e) Violation of subsection (a), (b), or (b1) is Class F felony. Violation of subsection (c) is not a crime but is punishable under G.S. 120-103. (1975, c. 564, s. 1; 1983, c. 780, s. 2; 1993, c. 539, s. 1302; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 19.27(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective December 1, 1997, and applicable to offenses committed on or after that date, rewrote subsection (b); added subsection (b1); substituted "employer, directly or indirectly, to threaten economically" for "employer to threaten economically, directly or indirectly" in subsection (c); substituted "(a), (b), or (b1)" for "(a) or (b)" in subsection (e); and made stylistic changes throughout the section.

§ 120-86.1. Personnel-related action unethical.

It shall be unethical for a legislator to take, promise, or threaten any legislative action, as defined in G.S. 120-47.1(4), for the purpose of influencing or in retaliation for any action regarding State employee hirings, promotions, grievances, or disciplinary actions subject to Chapter 126 of the General Statutes. (1997-520, s. 7.)

Editor's Note. — Session Laws 1997-520, s. 9, made this section effective September 17, 1997.

Part 3. Legislative Ethics Committee.

§ 120-99. (For applicability, see note) Creation; composition.

The Legislative Ethics Committee is created to consist of ten members, five Senators appointed by the President Pro Tempore of the Senate, among them — two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader, and five members of the House of Representatives appointed by the Speaker of the House, among them — two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader.

The President Pro Tempore of the Senate and the Speaker of the House shall each designate a cochair of the Legislative Ethics Committee from the respective officer's appointees. The cochair appointed by the President Pro Tempore of the Senate shall preside over the Legislative Ethics Committee during the odd-numbered year, and the cochair appointed by the Speaker of the House shall preside in the even-numbered year.

The provisions of G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that both cochairs shall sign all subpoenas on behalf of the Committee. (1975, c. 564, s. 1; 1985, c. 790, s. 6; 1991, c. 739, s. 15; 1995, c. 180, s. 1.)

Editor's Note. —

Session Laws 1995, c. 180, s. 4 provides that the terms of office of the current members of the Legislative Ethics Committee shall not be affected by that act, except that the Senator previously appointed as chairman is designated the cochair from the Senate and shall serve until the expiration of the Senator's current term of office as a member of the General Assembly and the Speaker of the House shall make the additional appointment as soon as practicable after ratification (June 6, 1995).

Effect of Amendments. — The 1995 amendment, effective June 6, 1995, in the first paragraph substituted "ten members, five Senators" for "a chairman and eight members, four Senators" following "created to consist of", inserted "among them —" twice preceding "two from a list of four", and substituted "five" for "four" preceding "members of the House"; rewrote the second paragraph; and substituted "both cochairs" for "the chairman" preceding "shall sign all subpoenas" in the last paragraph.

§ 120-100. Term of office; vacancies.

Appointments to the Legislative Ethics Committee shall be made immediately after the convening of the regular session of the General Assembly in odd-numbered years, and appointees shall serve until the expiration of their then-current terms as members of the General Assembly. A vacancy occurring for any reason during a term shall be filled for the unexpired term by the authority making the appointment which caused the vacancy, and the person appointed to fill the vacancy shall, if possible, be a member of the same political party as the member who caused the vacancy. (1975, c. 564, s. 1; 1995, c. 180, s. 2.)

Editor's Note. — Session Laws 1995, c. 180, s. 4 provides that the terms of office of the current members of the Legislative Ethics Committee shall not be affected by that act, except that the Senator previously appointed as chairman is designated the cochair from the Senate and shall serve until the expiration of the Senator's current term of office as a member of the General Assembly and the Speaker of the House shall make the additional appointment as soon as practicable after ratification (June 6, 1995).

Effect of Amendments. — The 1995 amendment, effective June 6, 1995, deleted the first sentence regarding initial members of the Legislative Ethics Committee and expiration of their terms; substituted "Appointments to the Legislative Ethics Committee" for "Thereafter, appointments" at the beginning of the present first sentence; and deleted the former third sentence which read "The chairman shall serve for one year and shall be appointed each year."

§ 120-101. Quorum; expenses of members.

Six members constitute a quorum of the Committee. A vacancy on the Committee does not impair the right of the remaining members to exercise all the powers of the Committee.

The members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties. (1975, c. 564, s. 1; 1995, c. 180, s. 3.)

Effect of Amendments. — The 1995 amendment, effective June 6, 1995, substituted "Six members" for "Five members" at the beginning of the first paragraph and deleted "chairman and" preceding "members of the Committee" near the beginning of the second paragraph.

ARTICLE 16.

Legislative Appointments to Boards and Commissions.

§ 120-123. Service by members of the General Assembly on certain boards and commissions.

No member of the General Assembly may serve on any of the following boards or commissions:

(1) The Board of Agriculture, as established by G.S. 106-2.
(1a) Not effectuated.
(1b) The Rules Review Commission as established by G.S. 143B-30.1.

(2) The Art Museum Building Commission, as established by G.S. 143B-59.

(3) The Governor's Advocacy Council for Persons with Disabilities, as established by G.S. 143B-403.2.

(3a) The State Banking Commission, as established by G.S. 53-92.

(4) The Board of Public Telecommunications Commissioners, as established by G.S. 143B-426.9.

(5) The Board of Transportation, as established by G.S. 143B-350.

(6) The Board of Trustees Teachers' and State Employees' Retirement System, as established by G.S. 135-6.

(6a) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1030, s. 33, effective July 24, 1992.

(7) The Coastal Resources Commission, as established by G.S. 113A-104.

(8) The Environmental Management Commission, as established by G.S. 143B-283.

(8a) The Genetic Engineering Review Board, as created by G.S. 106-769.

(9) The State Fire and Rescue Commission, as established by G.S. 58-78-1.

(10) The Public Officers and Employees Liability Insurance Commission, as established by G.S. 58-32-1.

(11) Repealed by Session Laws 1983 (Regular Session, 1984), c. 995, s. 4.

(12) Repealed by Session Laws 1987, c. 71, s. 4.

(13) The North Carolina Criminal Justice Education and Training Standards Commission, as established by G.S. 17C-3.

(14) The North Carolina Housing Finance Agency Board of Directors, as established by G.S. 122A-4.

(15) The North Carolina Seafood Industrial Park Authority, as established by G.S. 113-315.25.

(16) Repealed by Session Laws 1985, c. 479, s. 153(b).

(17) The Board of Trustees of the North Carolina School of Science and Mathematics, as established by G.S. 116-233.

(18) The North Carolina Board of Science and Technology, as established by G.S. 143B-426.30.

(19) Repealed by Session Laws 1989, c. 500, s. 107(b).

(20) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1024, s. 23(a).

(21) The Board of Trustees of the University of North Carolina Center for Public Television, as established by G.S. 116-37.1.

(22) The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, as established by G.S. 143B-147.

(23) Repealed by Session Laws 1993, c. 501, s. 12, effective July 23, 1993.

(24) The North Carolina Alcoholism Research Authority, as established by G.S. 122C-431.

(25) The North Carolina Ports Railway Commission, as established by G.S. 143B-469.

(25a) The North Carolina Global TransPark Authority as established under G.S. 63A-3.

(26) The North Carolina State Ports Authority, as established by G.S. 143B-452.

(27) The Property Tax Commission, as established by G.S. 105-288.
(28) The Social Services Commission, as established by G.S. 143B-154.
(29) The North Carolina State Commission of Indian Affairs, as established by G.S. 143B-407.
(30) The Wildlife Resources Commission, as established by G.S. 143-240.
(31) The North Carolina Council for Women, as established by G.S. 143B-393.
(32) The Board of Trustees of North Carolina Museum of Art, established by G.S. 140-5.13.
(33) The North Carolina Sheriffs' Education and Training Standards Commission, established by G.S. 17E.
(33a) Repealed by Session Laws 1987, c. 738, s. 41(d).
(34) The Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, as established by G.S. 143B-426.24.
(34a) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1024, s. 23(b).
(34b) The North Carolina Housing Partnership, as established by G.S. 122E-4.
(35) The Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan, as established by G.S. 135-39.
(36) The Milk Commission as established by G.S. 106-266.7.
(37) The State Board of Chiropractic Examiners as established by G.S. 90-139.
(38) The North Carolina Manufactured Housing Board, as established by G.S. 143-143.10.
(39) Repealed by Session Laws 1987, c. 71, s. 4.
(40) The Alarm System Licensing Board, as established by G.S. 74D-4.
(41) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1011, s. 2.1(c).
(42) The Crime Victims Compensation Commission, as established by G.S. 15B-3.
(43) The North Carolina Council on Ocean Affairs, as established by G.S. 143B-390.10.
(44) The Child Care Commission, as established by G.S. 143B-168.3.
(45) Repealed by Session Laws 1995, c. 517, s. 39, effective October 1, 1995.
(45a) The North Carolina Teaching Fellows Commission, as established by G.S. 115C-363.22.
(46) The Board of Directors of the North Carolina Arboretum, as established in G.S. 116-240.
(47) The North Carolina Agricultural Finance Authority, as established by G.S. 122D-4.
(48) Reserved for future codification purposes.
(49) The Northeastern North Carolina Farmers Market Commission as established by G.S. 106-720.
(50) The Southeastern North Carolina Farmers Market Commission as established by G.S. 106-727.
(50a) The North Carolina Board of Dietetics/Nutrition as created by Article 25 of Chapter 90 of the General Statutes.

(51) The State Building Commission, as established by G.S. 143-135.25.
(52) The Commission on School Facility Needs, established by G.S. 115C-489.4.
(53) The North Carolina Marine Fisheries Commission as established by G.S. 143B-289.5.
(54) The North Carolina Low-Level Radioactive Waste Management Authority, as established by G.S. 104G-5.
(55) The North Carolina Health Insurance Trust Commission, as established by G.S. 58-68-10.
(56) The North Carolina Hazardous Waste Management Commission, as established by G.S. 130B-6.
(57) The Information Resource Management Commission, as established by G.S. 143B-426.21.
(58) The Appraisal Board created in G.S. 93E-1-5.
(59) Repealed by Session Laws 1997-286, s. 7, effective July 10, 1997.
(59a) The North Carolina Principal Fellows Commission established by G.S. 116-74.41.
(60) Repealed by Session Laws 1997-443, s. 8.26, effective August 28, 1997.
(61) The State Health Plan Purchasing Alliance Board, as established by G.S. 143-625.
(62) The Northeastern North Carolina Regional Economic Development Commission, as established by G.S. 158-8.2.
(63) The Teacher Academy Board of Trustees, as established by Section 17.9 of House Bill 229 of the 1995 General Assembly [G.S. 116-30.01].
(63a) The North.Carolina Code Officials Qualification Board, as established by G.S. 143-151.9.
(64) A facility authority established under Part 4 of Article 20 of Chapter 160A of the General Statutes.
(64a) The North Carolina Educational Facilities Finance Agency, as established by G.S. 115E-4.
(65) The Board of Governors of the North Carolina Health Care Excess Liability Fund, as established by G.S. 58-47-20.
(66) The Local Government Commission, as established by G.S. 159-3.
(67) The Board of Trustees of the Natural Heritage Trust Fund, as established by G.S. 113-77.8. (1981 (Reg. Sess., 1982), c. 1191, s. 2; 1983, c. 328, s. 1.1; c. 558, s. 5; c. 559, s. 4; c. 717, ss. 2, 3, 43.2, 99, 105, 110; c. 761, s. 179; c. 778, s. 2; c. 786, s. 9; c. 789, s. 2; c. 832, ss. 2, 6; c. 871, s. 3; c. 899, s. 3; 1983 (Reg. Sess., 1984), c. 995, ss. 4, 19; 1985, c. 202, s. 5; c. 479, s. 153(b); c. 589, s. 37; c. 666, s. 80; c. 746, s. 6; c. 757, ss. 155(b), 167(h), 179(e), 206(f), 208(c); 1985 (Reg. Sess., 1986), c. 1011, ss. 2, 2.1(c); c. 1014, ss. 63(h), 99; c. 1028, s. 33; c. 1029, s. 14.3; 1987, c. 71, ss. 4, 5; c. 622, s. 15; c. 641, s. 21; c. 738, s. 41(d); c. 765, s. 2; c. 841, s. 4; c. 850, s. 18; 1987 (Reg. Sess., 1988), c. 993, s. 27; 1989, c. 139, s. 2; c. 168, s. 8; c. 239, s. 7; c. 500, ss. 107(b), 109(g); c. 625, s. 24; c. 727, s. 140; c. 750, s. 4; c. 752, s. 148(c); 1989 (Reg. Sess., 1990), c. 827, s. 14; c. 1024, s. 23(a)-(d); c. 1074, s. 32(a)-(c); 1991, c. 134, s. 1; c. 301, s. 1; c. 668, s. 2; c. 749, s. 6; 1991 (Reg. Sess., 1992), c. 900, s. 14(f); c. 1007, s. 37; c. 1030, ss. 33, 51.14; c. 1044, s. 10(b); 1993, c. 321, ss. 85(d), 135(b),

309.1(b); c. 405, s. 18.1; c. 419, s. 13.1; c. 501, s. 12; c. 529, s. 3.9; 1993 (Reg. Sess., 1994), c. 777, s. 4(f); 1995, c. 324, s. 17.9(i); c. 458, s. 2; c. 490, ss. 12(b), 17(b), 21(b), 30(b), 37(b); c. 517, s. 39(d); 1997-286, s. 7; 1997-443, s. 8.26; 1997-506, s. 42.)

Editor's Note. — Section 58-47-20 referred to in subdivision (65) has been repealed.

Section 58-68-10 referred to in subdivision (55) has been repealed.

Section 143B-426.21 referred to in subdivision (57) has been renumbered as 143B-472.41.

The majority of section 17.9 of House Bill 229 of the 1995 of the General Assembly, which is referred to above in subdivision (63), has been codified as 116-30.01 at the direction of the Revisor of Statutes.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Session Laws 1995, c. 324, s. 28.4, c. 458, s. 6 and c. 517, ss. 39(i) and 41, contain severability clauses.

Session Laws 1997-148, s. 8, purported to amend § 20-123(57). There is no subdivision (57) in § 20-123, and it appears that the amendment was intended to be for this section. The attempted amendment would have substituted "G.S. 143B-472.41" for "G.S. 143B-426.21" in subdivision (57).

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1995, c. 490, ss. 12(b), 17(b), 21(b), 30(b) and 37(b), added subdivisions (63a), (64a), (65), (66) and (67). For the applicability of this amendment, see editor's note.

Session Laws 1997-286, s. 7, effective July 10, 1997, repealed subdivision (59), which read "The North Carolina Aquariums Commission, as established by G.S. 143B-390.15."

Session Laws 1997-443, s. 8.26, effective August 28, 1997, deleted subdivision (60) which read "The Commission on School Technology, as established by G.S. 115C-102.5, except as provided in G.S. 115C-102.5(c)."

Session Laws 1997-506, s. 42, effective September 16, 1997, substituted "Care" for "Day-Care" in subdivision (44).

ARTICLE 17.

Confidentiality of Legislative Communications.

§ 120-131.1. Requests from legislative employees for assistance in the preparation of fiscal notes.

(a) A request made to an employee of a State agency other than the General Assembly by an employee of the Fiscal Research Division for assistance in the preparation of a fiscal note is confidential. An employee of a State agency other than the General Assembly who receives such a request or who learns of such a request made to another employee of his or her agency shall reveal the existence of the request only to other employees of the agency to the extent that it is necessary to respond to the request, and to the employee's supervisor and to the Office of State Budget and Management. All documents prepared by the employee in response to the request of the Fiscal Research Division are also confidential and shall be kept confidential in the same manner as the original request, except that documents submitted to the Fiscal Research Division in response to the request cease to be confidential under this section when the Fiscal Research Division releases a fiscal note based on the documents.

(b) As used in this section, "employee" means an employee or officer of a State agency.

(c) Violation of this section may be grounds for disciplinary action. (1995, c. 324, s. 8.1(a); c. 507, s. 8.2.)

Editor's Note. — Session Laws 1995, c. 324, s. 8.1(b) made this section effective 30 days after ratification. The Act was ratified June 26, 1995.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1995, c. 507, s. 1.1, provides that that act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability cause.

§ 120-133. Redistricting communications.

Notwithstanding any other provision of law, all drafting and information requests to legislative employees and documents prepared by legislative employees for legislators concerning redistricting the North Carolina General Assembly or the Congressional Districts are no longer confidential and become public records upon the act establishing the relevant district plan becoming law. Present and former legislative employees may be required to disclose information otherwise protected by G.S. 120-132 concerning redistricting the North Carolina General Assembly or the Congressional Districts upon the act establishing the relevant district plan becoming law. (1983, c. 900, s. 1; 1995, c. 20, s. 13.)

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1995 amendment, effective on or after January 1, 1997, if constitutional amendments proposed by 1995, c. 5. ss. 1-2 are approved, in the first and second sentences deleted "ratification of the" preceding "act establishing" and added "becoming law" at the end.

ARTICLE 18A.

Review of Proposals to License New Occupations and Professions.

§ 120-149.2. Definitions.

As used in this Article:

(1) "Assessment report" means a report that initially describes the need for and the fiscal impact of a new licensing board.

(2) "Committee" means the Legislative Committee on New Licensing Boards.

(3) "Licensing" means a regulatory system that requires persons to meet certain qualifications before they are eligible to engage in a particular occupation or profession, but does not include a regulatory system that imposes certain qualifications as a condition for using or advertising specified titles or descriptions in connection with a particular occupation or profession, unless the restrictions on the use and advertisement of said titles is so broad as to effectively prohibit the practitioner from engaging in the profession or occupation without meeting the qualifications.

(4) "New licensing board" includes each of the following:
  a. A proposed new board with licensing authority over an occupation or profession; and
  b. An existing board with proposed licensing authority over an occupation or profession not previously licensed by the board; provided, however, that the Committee, in reviewing a proposal to license a profession or occupation under an existing board, shall not assess the need for the continued licensing of professions and occupations already within the board's jurisdiction.

(5) "Supplementary report" means a report that assesses the changes proposed by an amendment or committee substitute which would substantially alter a legislative proposal to create a new licensing board and for which an assessment report has already been prepared. (1987, c. 180, s. 1; 1997-456, s. 27.)

Editor's Note. — Subdivisions (4)(i) and (4)(ii) were renumbered as subdivisions (4)a. and (4)b. pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

§ 120-149.3. Assessment of new licensing boards.

(a) Any legislative proposal introduced in the General Assembly after the effective date of this act proposing (1) the establishment of a new licensing board, or (2) a study of the need to establish a new licensing board, shall not be eligible for consideration on the floor of either house (other than first reading) or before any committee of either house of the General Assembly until a final assessment report has been issued pursuant to G.S. 120-149.4(e), with a copy of the report accompanying the proposal in accordance with the rules of the appropriate house.

(b) If the proposal to establish a new licensing board is first contained in a legislative proposal, the sponsor shall present a copy of the legislative proposal to the Legislative Committee on New Licensing Boards which shall prepare an assessment report. If the proposal is not in the form of a legislative proposal, the person or organization seeking to establish a new licensing board may obtain an assessment report from the Committee only if a legislator requests such a report.

(c) If a legislative proposal receives a favorable report but does not become law during the biennial session in which it is introduced, a new assessment report shall be required before the same or a substantially similar legislative proposal may be considered after first reading or by any committee during a subsequent biennial session of the General Assembly. If a proposal receives a favorable report but is not introduced as a legislative proposal, the favorable report shall expire at the adjournment of the biennial session coinciding with or following issuance of the final report.

(d) A preliminary assessment report shall be prepared and returned to the sponsor or requesting legislator as soon as possible and not later than 60 days after the Committee receives the request, provided that if the volume of requests makes preparation of all such reports impossible within that time, the Committee may extend the time for preparation of any report to a maximum of 90 days from the time the request is received. The Committee shall not consider any request until it has received the information required by G.S. 120-149.4(a).

(e) If an amendment or committee substitute to a legislative proposal is introduced, the appropriate committee chairman, the presiding officer of the appropriate house, or the sponsor of the proposal may request a supplementary report when, in the opinion of any of them, the amendment or committee substitute substantially alters the legislative proposal. The supplementary report shall be prepared and returned to the requesting individual, and to the sponsor, within 30 days after the Committee receives the request.

(f) Each assessment report shall be designated as either preliminary, final, or supplementary and shall not constitute any part of the expression of legislative intent proposed by the formation of a new licensing board. An unfavorable final report shall not bar further consideration of the proposal on the floor or by any committee of either house.

(g) The Committee shall make all reports, including supplementary reports, available to all members of the General Assembly. At least one copy of all preliminary, final, and supplementary reports shall be maintained in the Legislative Library for public inspection. (1987, c. 180, s. 1; 1995, c. 20, s. 14.)

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1995 amendment, effective on or after January 1, 1997, if constitutional amendments proposed by 1995, c. 5, ss. 1-2 are approved, substituted "does not become law" for "is not ratified" in the first sentence of subsection (c).

ARTICLE 19.

Commission on Agriculture, Forestry, and Seafood Awareness.

§ 120-150. Creation; appointment of members.

There is created an Agriculture and Forestry Awareness Study Commission. Members of the Commission shall be citizens of North Carolina who are interested in the vitality of the agriculture and forestry sectors of the State's economy. Members shall be as follows:

(1) Three appointed by the Governor;

(2) Three appointed by the President Pro Tempore of the Senate;
(3) Three appointed by the Speaker of the House;
(4) The chairman of the House Agriculture Committee;
(5) The chairman of the Senate Agriculture Committee;
(6) The Commissioner of Agriculture or his designee;
(7) A member of the Board of Agriculture designated by the chairman of the Board of Agriculture;
(8) The President of the North Carolina Farm Bureau Federation, Inc., or his designee;
(9) The Master of the North Carolina State Grange or his designee;
(10) The Secretary of the Department of Environment and Natural Resources or his designee; and
(11) The President of the North Carolina Forestry Association, Inc., or his designee.

Members shall be appointed for two-year terms beginning October 1 of each odd-numbered year. The cochairmen of the Commission shall be the chairmen of the Senate and House Agriculture Committees respectively. (1985, c. 792, s. 20.1; 1989, c. 727, s. 218(81); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1991 (Reg. Sess., 1992), c. 785, s. 1; 1993, c. 23, s. 1; 1995, c. 490, s. 5; 1997-443, s. 11A.119(a).)

Editor's Note. —

Session Laws 1995, c. 490, which amended this section, by adding "Pro Tempore" in subdivision (2), in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

ARTICLE 20.

Joint Legislative Commission on Municipal Incorporations.

Part 1. Organization.

§ 120-161. Facilities and staff.

The Commission may meet in the Legislative Building or the Legislative Office Building. Staff for the Commission shall be provided by the Legislative Services Commission. The Commission may contract with the Institute of Government, the Local Government Commission, the Department of Environment and Natural Resources, or other agencies as may be necessary in completing any required studies, within the funds appropriated to the Commission. (1985 (Reg. Sess., 1986), c. 1003, s. 1; 1989, c. 727, s. 218(82); 1997-443, s. 11A.119(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

ARTICLE 21.

The North Carolina Study Commission on Aging.

§ 120-182. Commission; membership.

The Commission shall consist of 17 members, as follows:

(1) The Secretary of the Department of Health and Human Services or his delegate shall serve ex officio as a non-voting member;

(2) Eight shall be appointed by the Speaker of the House of Representatives, five being members of the House of Representatives at the time of their appointment, and at least two being planners for or providers of health, mental health, or social services to older adults; and

(3) **(For applicability see note)** Eight shall be appointed by the President Pro Tempore of the Senate, five being members of the Senate at the time of their appointment, and at least two being planners for or providers of health, mental health, or social services to older adults.

Any vacancy shall be filled by the appointing authority who made the initial appointment and by a person having the same qualifications. All initial appointments shall be made within one calendar month from the effective date of this Article. Members' terms shall last for two years. Members may be reappointed for two consecutive terms and may be appointed again after having been off the Commission for two years. (1987, c. 873, s. 13.1; 1991, c. 739, s. 18; 1997-443, s. 11A.118(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Session Laws 1997-443, s. 11A.119(a) purported to amend § 120-183.7 but it appears the intended reference was to § 20-183.7. At the direction of the Revisor of Statutes the amendment by Session Laws 1997-443, s. 11A.119(a) has been made to § 20-183.7.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 120-186.1. Commission; Alzheimer's Subcommittee, Long-Term Care Subcommittee, and other subcommittees.

(a) The Commission cochairs shall appoint subcommittees as needed to assist with the completion of the work of the Commission. These subcommittees may include an Alzheimer's Subcommittee, a Long-Term Care Subcommittee, or other special subject subcommittees. The cochairs shall appoint as members of any subcommittee not more than four Commission members and at least four but no more than six non-Commission members.

(b) The Commission cochairs shall prescribe the duties of any subcommittee created. Duties of the Alzheimer's Subcommittee may include conducting studies on the availability and efficacy of currently existing geriatric or memory disorder services and programs, advising the Commission on matters regarding Alzheimer's services and programs, and recommending to the Commission solutions to related problems. Duties of the Long-Term Care Subcommittee may include developing a long-term care policy for the State that has at least the following elements:

(1) Promotes elder independence, choice, and dignity;
(2) Provides a seamless, uniform system of flexible and responsive services;
(3) Provides single-entry access;
(4) Includes a wide range of home and community-based services available to all elderly who need them but targeted primarily to the most frail, needy elderly;
(5) Provides care and services at the least expense in the least confusing manner and based on the desires of the elder population and their families;
(6) Expands Medicaid income eligibility to allow more services in the home and community;
(7) Creates a single agency and budget stream to administer services to the elderly; and
(8) Approaches long-term care within the context of the entire health care system. (1989, c. 368, s. 1; 1995 (Reg. Sess., 1996), c. 583, s. 1.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 20, 1996, added "Long-Term Care Subcommittee, and other subcommittees" to the catchline; and rewrote this section.

ARTICLE 22.

The Public Health Study Commission.

§ 120-195. (See editor's note) Commission created; purpose.

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1 provided for the repeal of this Article, and was amended by Session Laws 1995, c. 358, s. 6, by Session Laws 1995, c. 437, s. 4, and by Session Laws 1995, c. 467, s. 3, to make the repeal effective July 28, 1995. Session Laws 1995, c. 507, s. 23A.6(b), effective July 1, 1995, amended Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1, by deleting the language repealing this Article; therefore, the repeal has not been given effect.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 120-196. (See editor's note) Commission duties.

The Commission shall study the availability and accessibility of public health services to all citizens throughout the State. In conducting the study the Commission shall:

(1) Determine whether the public health services currently available in each local health department conform to the mission and essential services established under G.S. 130A-1.1;

(2) Study the workforce needs of each local department, including salary levels, professional credentials, and continuing education requirements, and determine the impact that shortages of public health professional personnel have on the delivery of public health services in local health departments;

(3) Review the status and needs of local health departments relative to facilities, and the need for the development of minimum standards governing the provision and maintenance of these facilities;

(4) Propose a long-range plan for funding the public health system, which plan shall include a review and evaluation of the current structure and financing of public health in North Carolina and any other recommendations the Commission deems appropriate based on its study activities;

(5) Conduct any other studies or evaluations the Commission considers necessary to effectuate its purpose; and

(6) Study the capacity of small counties to meet the core public health functions mandated by current State and federal law. The Commission shall consider whether the current local health departments should be organized into a network of larger multidistrict community administrative units. In making its recommendations on this study, the Commission shall consider whether the State should establish minimum populations for local health departments, and if so, shall recommend the number of and configuration for these multicounty administrative units and shall recommend a series of incentives to ease county transition into these new arrangements. (1993 (Reg. Sess., 1994), c. 771, s. 2.1; 1995, c. 507, s. 23A.6(a), (b); 1997-502, s. 11.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1 provided for the repeal of this Article, and was amended by Session Laws 1995, c. 358, s. 6, by Session Laws 1995, c. 437, s. 4, and by Session Laws 1995, c. 467, s. 3, to make the repeal effective July 28, 1995. Session Laws 1995, c. 507, s. 23A.6(b), effective July 1, 1995, amended Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1, by deleting the language repealing this Article; therefore, the repeal has not been given effect.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Effect of Amendments. — The 1997 amendment, effective January 1, 1998, and applicable to contracts and agreements entered into on or after that date, substituted "local" for "county or district" in subdivisions (1) and (6) and near the end of subdivision (2), and substituted "local" for "county or district health" near the beginning of subdivision (2).

§ 120-197. (See editor's note) Commission membership; vacancies; terms.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1 provided for the repeal of this Article, and was amended by Session Laws 1995, c. 358, s. 6, by Session Laws 1995, c. 437, s. 4, and by Session Laws 1995, c. 467, s. 3, to make the repeal effective July 28, 1995. Session Laws 1995, c. 507, s. 23A.6(b), effective July 1, 1995, amended Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1, by deleting the language repealing this Article; therefore, the repeal has not been given effect.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 120-198. (See editor's note) Commission meetings.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1 provided for the repeal of this Article, and was amended by Session Laws 1995, c. 358, s. 6, by Session Laws 1995, c. 437, s. 4, and by Session Laws 1995, c. 467, s. 3, to make the repeal effective July 28, 1995. Session Laws 1995, c. 507, s. 23A.6(b), effective July 1, 1995, amended Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1, by deleting the language repealing this Article; therefore, the repeal has not been given effect.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 120-199. (See editor's note) Commission reimbursement.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1 provided for the repeal of this Article, and was amended by Session Laws 1995, c. 358, s. 6, by Session Laws 1995, c. 437, s. 4, and by Session Laws 1995, c. 467, s. 3, to make the repeal effective July 28, 1995. Session Laws 1995, c. 507, s. 23A.6(b), effective July 1, 1995, amended Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1, by deleting the language repealing this Article; therefore, the repeal has not been given effect.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 120-200. (See editor's note) Commission subcommittees; non-Commission membership.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1 provided for the repeal of this Article, and was amended by Session Laws 1995, c. 358, s. 6, by Session Laws 1995, c. 437, s. 4, and by Session Laws 1995, c. 467, s. 3, to make the repeal effective July 28, 1995. Session Laws 1995, c. 507, s. 23A.6(b), effective July 1, 1995, amended Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1, by deleting the language repealing this Article; therefore, the repeal has not been given effect.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 120-201. (See editor's note) Commission authority.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1 provided for the repeal of this Article, and was amended by Session Laws 1995, c. 358, s. 6, by Session Laws 1995, c. 437, s. 4, and by Session Laws 1995, c. 467, s. 3, to make the repeal effective July 28, 1995. Session Laws 1995, c. 507, s. 23A.6(b), effective July 1, 1995, amended Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1, by deleting the language repealing this Article; therefore, the repeal has not been given effect.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 120-202. (See editor's note) Commission reports.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1 provided for the repeal of this Article, and was amended by Session Laws 1995, c. 358, s. 6, by Session Laws 1995, c. 437, s. 4, and by Session Laws 1995, c. 467, s. 3, to make the repeal effective July 28, 1995. Session Laws 1995, c. 507, s. 23A.6(b), effective July 1, 1995, amended Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1, by deleting the language repealing this Article; therefore, the repeal has not been given effect.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 120-203. (See editor's note) Commission staff; meeting place.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1 provided for the repeal of this Article, and was amended by Session Laws 1995, c. 358, s. 6, by Session Laws 1995, c. 437, s. 4, and by Session Laws 1995, c. 467, s. 3, to make the repeal effective July 28, 1995. Session Laws 1995, c. 507, s. 23A.6(b), effective July 1, 1995, amended Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1, by deleting the language repealing this Article; therefore, the repeal has not been given effect.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

ARTICLE 23.

The Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services.

§ 120-204. Commission created; purpose.

There is established in the General Assembly a Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services. This commission shall study systemwide issues affecting the development, administration, and delivery of mental health, developmental disabilities, and substance abuse services, including issues relating to the governance, accountability, and quality of services delivered. (1996, 2nd Ex. Sess., c. 18, s. 24.8(a).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 29.6, made this article effective July 1, 1996.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

§ 120-205. Commission membership; meetings; terms; vacancies.

(a) This commission shall be composed of 22 members appointed as follows:

(1) Seven members of the House of Representatives at the time of their appointment, appointed by the Speaker of the House of Representatives. Of these members, one shall be a Chair of the House Appropriations Subcommittee on Health and Human Services;

(2) Seven members of the Senate at the time of their appointment, appointed by the President Pro Tempore of the Senate. Of these members, one shall be the Chair of the Senate Health and Human Services Appropriations Committee;

(3) Three members who are representatives of Coalition 2001, appointed by the Governor. Of these members, one shall be a representative from mental health, one from developmental disabilities, and one from substance abuse services;

(4) Two members of the public, appointed by the Speaker of the House of Representatives. Of these members, one shall be a county commissioner at the time of appointment, selected from a list of four candidates nominated by the North Carolina Association of County Commissioners. If the Association has failed to submit nominations by September 1, 1996, the Speaker of the House of Representatives may appoint any county commissioner;

(5) Two members of the public, appointed by the President Pro Tempore of the Senate. Of these members, one shall be a county commissioner at the time of appointment, selected from a list of four candidates nominated by the North Carolina Association of County Commissioners. If the Association has failed to submit nominations by September 1, 1996, the President Pro Tempore of the Senate may appoint any county commissioner; and

(6) One member who is a representative of the North Carolina Hospital Association, appointed by the Governor.

(b) The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each select a legislative member from their appointments to serve as cochair of the commission. Meetings shall be called at the will of the cochairs.

(c) All members shall serve at the will of their appointing officer. Unless removed or unless resigning, members shall serve for two-year terms. Members may be reappointed. Vacancies in membership shall be filled by the appropriate appointing officer. (1996, 2nd Ex. Sess., c. 18, s. 24.8(a); 1997-443, ss. 11.46(a), 11A.52.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-443, s. 11.46(a), effective August 28, 1997, in subsection (a) substituted "22" for "21" in the introductory language, added subdivision (a)(6), and made minor stylistic and punctuation changes.

Session Laws 1997-443, s. 11A.52, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" in subdivisions (a)(1) and (a)(2).

§ 120-206. Powers; per diem, subsistence, and travel allowances.

(a) The commission may contract for consulting services as provided by G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the commission. The professional staff shall include the appropriate staff from the Fiscal Research, Research, and Legislative Drafting Divisions of the Legislative Services Office of the General Assembly. Clerical staff shall be furnished to the commission through the offices of the House of Representatives and Senate Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the commission. The commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The commission, while in the discharge of official duties, may exercise all powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information and any data within their possession or ascertainable from their records, and the power to subpoena witnesses.

(b) Members of the commission shall receive per diem, subsistence, and travel allowances as follows:

(1) Commission members who are members of the General Assembly, at the rate established in G.S. 120-3.1;

(2) Commission members who are officials or employees of the State or of local government agencies, at the rate established in G.S. 138-6; and

(3) All other commission members, at the rate established in G.S. 138-5. (1996, 2nd Ex. Sess., c. 18, s. 24.8(a).)

§ 120-207. Reporting.

The commission shall report the results of its study, together with any legislative proposals and costs analyses, to every regular session of the General Assembly within a week of its convening. (1996, 2nd Ex. Sess., c. 18, s. 24.8(a).)

§§ 120-214 through 120-218: Reserved for future codification purposes.

Article 24.

The Legislative Study Commission On Children And Youth.

§ 120-215. Commission created; purpose.

There is created the Legislative Study Commission on Children and Youth. The purpose of the Commission is to study and evaluate the system of delivery of services to children and youth and to make recommendations to improve service delivery to meet present and future needs of the children and youth of this State. This study shall be a continuing one and the evaluation ongoing. (1997-390, s. 11.)

Editor's Note. — This section was enacted by Session Laws 1997-390, s. 11 as § 120-208 and was codified as this section at the direction of the Revisor of Statutes.

Session Laws 1997-390, s. 12, made this Article effective August 13, 1997.

§ 120-216. Commission duties.

The Commission shall have the following duties:

(1) Study the needs of children and youth. This study shall include, but is not limited to:

  a. Determining the adequacy and appropriateness of services:

    1. To children and youth receiving child welfare services;

    2. To children and youth in the juvenile court system; and

    3. Provided by the Division of Social Services and the Division of Youth Services of the Department of Health and Human Services.

  b. Developing methods for identifying and providing services to children and youth not receiving but in need of child welfare services, children and youth at risk of entering the juvenile court system, and children and youth exposed to domestic violence situations.

  c. Developing strategies for addressing the issues of school dropout, teen suicide, and adolescent pregnancy.

  d. Identifying and evaluating the impact on children and youth of other economic and environmental issues.

  e. Identifying obstacles to ensuring that children who are in secure or nonsecure custody are placed in safe and permanent homes within a reasonable period of time and recommending strategies for overcoming those obstacles. The Commission shall consider what, if anything, can be done to expedite the adjudication and appeal of abuse and neglect charges against parents so that decisions may be made about the safe and permanent placement of their children as quickly as possible.

(2) Evaluate problems associated with juveniles who are beyond the disciplinary control of their parents, including juveniles who are runaways, and develop solutions for addressing the problems of those juveniles.

(3) Identify strategies for the development and funding of a comprehensive statewide database relating to children and youth to facilitate State agency planning for delivery of services to children and youth.

(4) Conduct any other studies, evaluations, or assessments necessary for the Commission to carry out its purpose. (1997-390, s. 11; 1997-443, s. 11A.118(b).)

Editor's Note. — This section was enacted by Session Laws 1997-390, s. 11 as § 120-209 and was codified as this section at the direction of the Revisor of Statutes.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-443, s. 11A.118(a), effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 120-217. Commission membership; terms; compensation.

(a) The Commission shall consist of 25 members, as follows:

(1) Eleven members appointed by the Speaker of the House of Representatives, among them:
  a. Four shall be members of the House of Representatives at the time of their appointment,
  b. One shall be the director of a local health department,
  c. One shall be the director of a county department of social services,
  d. One shall be a representative of the general public who has knowledge of issues relating to children and youth,
  e. One shall be a licensed physician who is knowledgeable about the health needs of children and youth, and
  f. One shall be a chief district court judge recommended by the Council of Chief District Judges.
  g. One shall be a representative from the Covenant with North Carolina Children.

(2) Eleven members appointed by the President Pro Tempore of the Senate, as follows:
  a. Four shall be members of the Senate at the time of their appointment,
  b. One shall be the director of a mental health area authority,
  c. One shall be a representative of the Association of County Commissioners,
  d. One shall be a representative of the general public who has knowledge of issues relating to children and youth,
  e. One shall be a licensed attorney whose practice includes the representation of parents accused of criminal or civil abuse or neglect, and
  f. One shall be a chief district court judge recommended by the Council of Chief District Judges.

g. One shall be a representative from the North Carolina Child Advocacy Institute.

h. One shall be a representative from the North Carolina Child Fatality Task Force.

(3) The following shall serve ex officio as nonvoting members of the Commission:

a. The Secretary of Human Resources, or the Secretary's designee,

b. The State Superintendent of Public Instruction, or the Superintendent's designee,

c. The Secretary of Administration, or the Secretary's designee, and

d. The Director of the Administrative Office of the Courts, or the Director's designee.

(b) Any vacancy shall be filled by the appointing authority who made the initial appointment and by a person having the same qualification. Members' terms shall last for two years. Members may be reappointed for two consecutive terms and may be appointed again after having been off the Commission for two years.

(c) Commission members shall receive no salary as a result of serving on the Commission but shall receive necessary subsistence and travel expenses in accordance with G.S. 120-3.1, 138-5, and 138-6, as applicable. (1997-390, s. 11; 1997-483, s. 3.1.)

Editor's Note. — This section was enacted by Session Laws 1997-390, s. 11 as § 120-210 and was codified as this section at the direction of the Revisor of Statutes.

Session Laws 1997-483, s. 1, provides this act shall be known as "The Studies Act of 1997".

Effect of Amendments. — 1997 Session Laws 1997-483, s. 3.1, effective August 13, 1997, substituted "25 members" for "23 members" in the introductory language of subsection (a), substituted "Eleven members" for "Ten members" and "among them" for "as follows" in the introductory language of subdivision (a)(1), substituted "Eleven members" for "Ten members" in the introductory language of subdvision (a)(2), added subdivision (a)(2)h, and added subdivision (a)(3)d, making related changes.

§ 120-218. Commission meetings; public hearings; staff.

(a) The Commission shall hold its initial meeting at the call of the Speaker of the House of Representatives and the President Pro Tempore of the Senate. Subsequent meetings shall be held upon the call of the Commission cochairs. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall appoint a cochair each from the membership of the Commission.

(b) The Commission may hold public hearings across the State to solicit public input with respect to issues relating to children and youth.

(c) The Commission may contract for clerical or professional staff or for any other services it may require in the course of its ongoing study. At the request of the Commission, the Legislative Services Commission may supply members of the staff of the Legislative Services Office and clerical assistance to the Commission as the Legislative Services Commission considers appropriate. The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building. (1997-390, s. 11.)

Editor's Note. — This section was enacted by Session Laws 1997-390, s. 11 as § 120-211 and was codified as this section at the direction of the Revisor of Statutes.

§ 120-219. Commission reports.

The Commission shall report to the General Assembly and to the Governor the results of its study and recommendations. A written report shall be submitted to each biennial session of the General Assembly at its convening. (1997-390, s. 11.)

Editor's Note. — This section was enacted by Session Laws 1997-390, s. 11 as § 120-212 and was codified as this section at the direction of the Revisor of Statutes.

§ 120-220. Commission authority.

The Commission has the authority to obtain information and data from all State officers, agents, agencies, and departments, while in discharge of its duties, pursuant to G.S. 120-19, as if it were a committee of the General Assembly. (1997-390, s. 11.)

Editor's Note. — This section was enacted by Session Laws 1997-390, s. 11 as § 120-213 and was codified as this section at the direction of the Revisor of Statutes.

ARTICLE 25.

Joint Legislative Public Assistance Commission.

§ 120-225. Creation; members; duties.

(a) There is established Joint Legislative Public Assistance commission. The Joint Legislative Public Assistance Commission shall perform the duties and functions provided Part XII of S.L. 1997-443, shall monitor implementation of the provisions of Part XII of S.L. 1997-443, and shall make any necessary recommendations to the General Assembly regarding any further changes to law or rule. The Speaker of the House of Representatives shall appoint 10 members, two of whom shall be cochairs, and the President Pro Tempore of the Senate shall appoint 10 members, two of whom shall be cochairs.

(b) The Department [of Health and Human Services] shall report any changes made to the State Plan to the Joint Legislative Public Assistance Commission within 60 days after the change. (1997-443, § 12.18(a), (b).)

Editor's Note. — Session Laws 1997-443, ss. 12.18(a) and (b) were codified as this section at the direction of the Revisor of Statutes.

Session Laws 1997-443, s. 12.18(a) provides in part that the Joint Legislative Public Assistance Commission shall first convene within 30 days after Part XII of S.L. 1997-443 becomes law.

The bracketed words "of Health and Human Services" were inserted in subsection (b) at the direction of the Revisor of Statutes, as that appears to be the department intended.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the

1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 1997-443, s. 35.4, is a severability clause.

Chapter 121.

Editor's Note. — The legislation and annotations affecting Chapter 121 have been included in a recently published replacement chapter.

Chapter 122A.

North Carolina Housing Finance Agency.

Sec.
122A-5.13. Adult Care Home, Group Home, and Nursing Home Fire Protection Fund authorized; authority.
Sec.
122A-8. Bonds and notes.
122A-11. Trust funds.

§ 122A-5.13. Adult Care Home, Group Home, and Nursing Home Fire Protection Fund authorized; authority.

(a) The North Carolina Housing Finance Agency shall establish an Adult Care Home, Group Home, and Nursing Home Fire Protection Fund (hereinafter "Fire Protection Fund") to assist owners of adult care homes, group homes for developmentally disabled adults, and nursing homes with the purchase and installation of fire protection systems in existing and new adult care homes, group homes for developmentally disabled adults, and nursing homes. The Fire Protection Fund shall be a revolving fund.

(b) The Agency, in consultation with the Department of Health and Human Services, shall adopt rules for the management and use of the Fire Protection Fund. These rules at a minimum shall provide for the following:

(1) Financial incentives for owners of facilities who utilize Fire Protection Fund monies to install sprinkler systems instead of smoke detection equipment.

(2) Maximum loan amounts of one dollar and seventy-five cents ($1.75) per square foot for advanced smoke detectors and digital communication equipment, three dollars and seventy-five cents ($3.75) per square foot for residential sprinkler systems, and six dollars ($6.00) per square foot for institutional sprinkler systems.

(3) Interest rates from three percent (3%) to six percent (6%) for a period not to exceed 20 years for sprinkler systems and 10 years for smoke detection systems.

(4) Documentary verification that owners of facilities obtain fire protection systems at a reasonable cost.

(5) Acceleration of a loan when statutory fire protection requirements are not met by the facility for which the loan was made.

(6) Loan approval priority criteria that considers the frailty level of residents at a facility.

(7) Loan origination and servicing fees. (1996, 2nd Ex. Sess., c. 18, s. 24.26B(a); 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 29.6, made this section effective July 1, 1996.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1996, Second Extra Session, c. 18, s. 24.26B, provides that proceeds from the Fire Protection Fund may be used to provide staff support to the North Carolina Housing Finance Agency for loan processing and to the Department of Human Resources for review and approval of fire protection plans and inspections of fire protection systems; that the North Carolina Housing Finance Agency shall adopt temporary rules to implement this section by October 1, 1996; and provides for a transfer of funds to fund the Fire Protection Fund.

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 122A-8. Bonds and notes.

The Agency is hereby authorized to provide for the issuance, at one time or from time to time, of bonds and notes of the Agency to carry out and effectuate its corporate purposes. The Agency also is hereby authorized to provide for the issuance, at one time or from time to time of (i) bond anticipation notes in anticipation of the issuance of such bonds and (ii) construction loan notes to finance the making or purchase of mortgage loans to sponsors of residential housing for the construction, rehabilitation or improvement of residential housing. The total amount of bonds, bond anticipation notes, and construction loan notes outstanding at any one time shall not exceed one billion five hundred million dollars ($1,500,000,000) excluding therefrom any bond anticipation notes for the payment of which bonds have been issued. The principal of and the interest on such bonds or notes shall be payable solely from the funds herein provided for such payment. Any such notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, such notes may be paid from any available revenues or assets of the Agency. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the Agency at such price or prices and under such terms and conditions as may be determined by the Agency. Any such bonds or notes shall bear interest at such rate or rates as may be determined by the Local Government Commission of North Carolina with the approval of the Agency. Notes shall mature at such time or times not exceeding 10 years from their date or dates and bonds shall mature at such time or times not exceeding 43 years from their date or dates, as may be determined by the Agency. The Agency shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or notes or coupons attached thereto shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The Agency may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the Agency may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Upon the filing with the Local Government Commission of North Carolina of a resolution of the Agency requesting that its bonds and notes be sold, such bonds or notes may be sold in such manner, either at public or private sale, and for such price as the Commission shall determine to be for the best interest of the Agency and best effectuate the purposes of this Chapter, as long as the sale is approved by the Agency.

The proceeds of any bonds or notes shall be used solely for the purposes for which issued and shall be disbursed in such manner and under such restrictions, if any, as the Agency may provide in the resolution authorizing the issuance of such bonds or notes or in the trust agreement hereinafter mentioned securing the same.

Prior to the preparation of definitive bonds, the Agency may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Agency may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

Bonds or notes may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Chapter and the provisions of the resolution authorizing the issuance of such bonds or notes or the trust agreement securing the same. (1969, c. 1235, s. 8; 1973, c. 1296, s. 48; 1979, c. 844; 1979, 2nd Sess., c. 1238, s. 2; 1981, c. 343; 1983 (Reg. Sess., 1984), c. 1062, s. 2; 1985, c. 769, s. 2; 1997-13, s. 1.)

Effect of Amendments. — The 1997 amendment, effective April 3, 1997, rewrote the first sentence; substituted "housing. The" for "housing; provided, however, that the" at the end of the second sentence; deleted "shall" preceding "have been issued" near the end of the third sentence; and substituted "the Commission" for "said Commission" and substituted "Chapter, as long as the sale is" for "Chapter provided that such sale shall be" in the last sentence of the first paragraph.

§ 122A-11. Trust funds.

Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Chapter shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The resolution authorizing any obligations or the trust agreement securing the same may provide that any of such moneys may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this Chapter and such resolution or trust agreement may provide.

Any moneys received pursuant to the authority of this Chapter and any other moneys available to the Agency for investment may be invested:

(1) As provided in G.S. 159-30, except that for purposes of G.S. 159-30(b) the Agency may deposit moneys at interest in banks or trust companies outside as well as in this State, as long as any moneys at deposit outside this State are collateralized to the same extent and manner as if at deposit in this State;

(2) In evidences of ownership of, or fractional undivided interests in, future interest and principal payments on either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States government, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state in the capacity of custodian;

(3) In obligations which are collateralized by mortgage pass-through securities guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association;

(4) In a trust certificate or similar instrument evidencing an equity investment in a trust or other similar arrangement which is formed for the purpose of issuing obligations which are collateralized by mortgage pass-through or participation certificates guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association; and

(5) In repurchase agreements with respect to either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States government if all of the following conditions are met:

a. The repurchase agreement is entered into with an institution whose ability to pay its unsecured long-term obligations (including, if the institution is an insurance company, its claims paying ability) is rated in one of the two highest ratings categories by a nationally recognized securities rating agency. If the term of the repurchase agreement is for a period of one year or less, however, the repurchase agreement may be entered into with an institution that does not have such a long-term rating if its ability to pay its unsecured short-term obligations is rated in one of the two highest ratings categories by a nationally recognized securities rating agency. If the institution with which the agreement is to be entered does not meet the ratings requirement of this subparagraph, the repurchase agreement may nevertheless be entered into with the institution if the obligations of the institution under the repurchase agreement are fully guaranteed by another institution that does meet the ratings requirement of this subparagraph.

b. The repurchase agreement provides that it shall be terminated, without penalty, if the institution with which the repurchase agreement is entered or by whom the institution's obligations are guaranteed fails to maintain (i) in the event that the repurchase agreement was entered into in reliance upon the rating of the institution's long-term obligations, a rating of its long-term obligations in one of the three highest ratings categories by at least one nationally recognized securities rating agency, or (ii) in the event that the repurchase agreement was entered into in reliance upon the rating of the institution's short-term obligations, a rating of its short-term obligations in one of the two highest ratings categories by at least one nationally recognized securities rating agency. The repurchase agreement does not have to be terminated, however, if a new guarantor meeting the rating requirement set forth in subparagraph a. as the requirement necessary for the Agency to enter the repurchase agreement agrees to fully guarantee the obligations of the institution under the repurchase agreement.

c. The obligations that are subject to the repurchase agreement are delivered (in physical or in book entry form) to the Agency, or any financial institution serving either as trustee for obligations issued by the Agency or as fiscal agent for the Agency or the State Treasurer or are supported by a safekeeping receipt issued by a depository satisfactory to the Agency. The repurchase agreement must provide that the value of the underlying obligations shall be maintained at a current market value, calculated at least daily, of not less than one hundred percent (100%) of the repurchase price. The financial institution serving either as trustee or as fiscal agent for the Agency holding the obligations subject to the repurchase agreement hereunder or the depository issuing the safekeeping receipt shall not be the provider of the repurchase agreement.

d. A valid and perfected first security interest in the obligations which are the subject of the repurchase agreement has been granted to the Agency or its assignee or book entry procedures, conforming, to the extent practicable, with federal regulations and satisfactory to the agency have been established for the benefit of the Agency or its assignee.

e. The securities are free and clear of any adverse third-party claims.

f. The repurchase agreement is in a form satisfactory to the Agency. (1969, c. 1235, s. 11; 1973, c. 1296, s. 51; 1985, c. 479, s. 149(b); 1985 (Reg. Sess., 1986), c. 1014, s. 185; 1997-13, s. 2.)

Effect of Amendments. — The 1997 amendment, effective April 3, 1997, substituted "as long as any" for "provided any such" in subdivision (1); and rewrote subdivision (5).

Chapter 122C.

Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985.

Article 1.

General Provisions.

Sec.

122C-3. Definitions.

Article 2.

Licensure of Facilities for the Mentally Ill, the Developmentally Disabled, and Substance Abusers.

122C-22. Exclusions from licensure; deemed status.

Article 3.

Clients' Rights and Adverse Instruction.

Part 1. Client's Rights.

122C-57. Right to treatment and consent to treatment.
122C-62. Additional rights in 24-hour facilities.
122C-68 through 122C-70. [Reserved.]

Part 2. Advance Instruction for Mental Health Treatment.

122C-71. Purpose.
122C-72. Definitions.
122C-73. Scope, use, and authority of advance instruction for mental health treatment.
122C-74. Effectiveness and duration; revocation.
122C-75. Scope of authority of attorney-in-fact; powers and duties; limitation on liability.
122C-76. Penalty.
122C-77. Statutory form for advance instruction for mental health treatment.

Article 4.

Organization and System for Delivery of Mental Health, Developmental Disabilities, and Substance Abuse Services.

Part 2. State, County and Area Authority.

122C-112. Powers and duties of the Secretary.

Sec.

122C-113. Cooperation between Secretary and other agencies.
122C-117. Powers and duties of the area authority.
122C-118. Structure of area board.
122C-124. Area Authority funding suspended.
122C-125. Area Authority financial failure; State assumption of financial control.

Part 7. Contested Case Hearings for Eligible Assaultive and Violent Children.

122C-197. Mediation.
122C-199. Administrative review by Review Officer.

Article 5.

Procedures for Admission and Discharge of Clients.

Part 7. Involuntary Commitment of the Mentally Ill; Facilities for the Mentally Ill.

122C-261. Affidavit and petition before clerk or magistrate when immediate hospitalization is not necessary; custody order.
122C-263. Duties of law-enforcement officer; first examination by physician or eligible psychologist.

Article 6.

Special Provisions.

Part 1. Camp Butner and Community of Butner.

122C-403. Secretary's authority over Camp Butner reservation.
122C-405. Procedure applicable to rules.

Part 1A. Butner Planning Council.

122C-412. Butner Planning Council; created.
122C-412.1. Butner Planning Council; powers.
122C-412.2. Butner Planning Council; planning responsibility.

Part 2. Black Mountain Joint Security Force.

Sec.
122C-421. Joint security force.

Part 2A. Broughton Hospital Joint Security Force.

Sec.
122C-430. Joint security force.

ARTICLE 1.

General Provisions.

§ 122C-3. Definitions.

As used in this Chapter, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

(1) "Area authority" means the area mental health, developmental disabilities, and substance abuse authority.

(2) "Area board" means the area mental health, developmental disabilities, and substance abuse board.

(3) "Camp Butner reservation" means the original Camp Butner reservation as may be designated by the Secretary as having been acquired by the State and includes not only areas which are owned and occupied by the State but also those which may have been leased or otherwise disposed of by the State.

(4) "City" has the same meaning as in G.S. 153A-1(1).

(5) "Catchment area" means the geographic part of the State served by a specific area authority.

(6) "Client" means an individual who is admitted to and receiving service from, or who in the past had been admitted to and received services from, a facility.

(7) "Client advocate" means a person whose role is to monitor the protection of client rights or to act as an individual advocate on behalf of a particular client in a facility.

(8) "Commission" means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, established under Part 4 of Article 3 of Chapter 143B of the General Statutes.

(9) "Confidential information" means any information, whether recorded or not, relating to an individual served by a facility that was received in connection with the performance of any function of the facility. "Confidential information" does not include statistical information from reports and records or information regarding treatment or services which is shared for training, treatment, habilitation, or monitoring purposes that does not identify clients either directly or by reference to publicly known or available information.

(10) "County of residence" of a client means the county of his domicile at the time of his admission or commitment to a facility. A county of residence is not changed because an individual is temporarily out of his county in a facility or otherwise.

(11) "Dangerous to himself or others" means:

  a. "Dangerous to himself" means that within the relevant past:

1. The individual has acted in such a way as to show:
   I. That he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and
   II. That there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given pursuant to this Chapter. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a prima facie inference that the individual is unable to care for himself; or
2. The individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given pursuant to this Chapter; or
3. The individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given pursuant to this Chapter.

Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.

b. "Dangerous to others" means that within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is prima facie evidence of dangerousness to others.

(11a) "Day/night service" means a service provided on a regular basis, in a structured environment that is offered to the same individual for a period of three or more hours within a 24-hour period.

(12) "Department" means the North Carolina Department of Health and Human Services.

(12a) "Developmental disability" means a severe, chronic disability of a person which:

a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;

b. Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22;

c. Is likely to continue indefinitely;

d. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, capacity for independent living, learning, mobility, self-direction and economic self-sufficiency; and

e. Reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services which are of a lifelong or extended duration and are individually planned and coordinated; or

f. When applied to children from birth through four years of age, may be evidenced as a developmental delay.

(13) "Division" means the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department.

(13a) "Eligible assaultive and violent children" means children who are citizens of North Carolina and:

a. Who suffer from emotional, mental, or neurological handicaps that have been accompanied by behavior that is characterized as violent or assaultive; and

b. Who are involuntarily institutionalized or otherwise placed in residential programs, including:

1. Minors who are mentally ill as defined by G.S. 122C-3(21) and who are admitted for evaluation or treatment to a treatment facility under Article 5 of Chapter 122C of the General Statutes or are presented for admission and denied due to their behaviors or handicapping conditions;
2. Minors who are referred to an area mental health, developmental disabilities, and substance abuse authority pursuant to G.S. 7A-647(3) for whom residential treatment or placement is recommended;
3. Minors who are placed in residential programs as a condition of probation pursuant to G.S. 7A-649(8);
4. Minors who are ordered to a professional residential treatment program pursuant to G.S. 7A-649(6); and
5. Minors committed to the custody of the Division of Youth Services pursuant to G.S. 7A-649(10); and

c. For whom the State has not provided appropriate treatment and educational programs.

(13a1) Recodified as subdivision (13c).

(13b) Recodified as subdivision (13d).

(13c) "Eligible infants and toddlers" means children with or at risk for developmental delays or atypical development until:

a. They have reached their third birthday;

b. Their parents have requested to have them receive services in the preschool program for handicapped children established pursuant to Part 14 of Article IX of Chapter 115C of the General Statutes; and

c. They have been placed in the program by the local educational agency.

In no event shall a child be considered an eligible toddler after the beginning of the school year immediately following the child's third birthday.

The early intervention services that may be provided for these children and their families include early identification and screening, multidisciplinary evaluations, case management services, family training, counseling and home visits, psychological services, speech pathology and audiology, and occupational and physical therapy. All evaluations performed as part of early intervention services shall be appropriate to the individual child's age and development.

(13d) "Eligible psychologist" means a licensed psychologist who has at least two years' clinical experience. After January 1, 1995, "eligible psychologist" means a licensed psychologist who holds permanent licensure and certification as a health services provider psychologist issued by the North Carolina Psychology Board.

(14) "Facility" means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers, and includes:

a. An "area facility", which is a facility that is operated by or under contract with the area authority. A facility that is providing services under contract with the area authority is an area facility for purposes of the contracted services only. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;

b. A "licensable facility", which is a facility that provides services for one or more minors or for two or more adults. When the services offered are provided to individuals who are mentally ill or developmentally disabled, these services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. When the services offered are provided to individuals who are substance abusers, these services shall include all outpatient services, day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities;

c. A "private facility", which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority;

d. The psychiatric service of the University of North Carolina Hospitals at Chapel Hill;

e. A "residential facility", which is a 24-hour facility that is not a hospital, including a group home;

f. A "State facility", which is a facility that is operated by the Secretary;

g. A "24-hour facility", which is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under this Chapter; and

h. A Veterans Administration facility or part thereof that provides services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers.

(15) "Guardian" means a person appointed as a guardian of the person or general guardian by the court under Chapters 7A or 35A or former Chapters 33 or 35 of the General Statutes.

(16) "Habilitation" means training, care, and specialized therapies undertaken to assist a client in maintaining his current level of functioning or in achieving progress in developmental skills areas.

(17) "Incompetent adult" means an adult individual adjudicated incompetent.

(18) "Intoxicated" means the condition of an individual whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol or other substance.

(19) "Law-enforcement officer" means sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under G.S. 122C-302.

(20) "Legally responsible person" means: (i) when applied to an adult, who has been adjudicated incompetent, a guardian; or (ii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment.

(20a) "Local funds" means fees from services, including client payments, Medicare and the local and federal share of Medicaid receipts, fees from agencies under contract, gifts and donations, and county and municipal funds, and any other funds not administered by the Division.

(21) "Mental illness" means: (i) when applied to an adult, an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control; and (ii) when applied to a minor, a mental condition, other than mental retardation alone, that so impairs the youth's capacity to exercise age adequate self-control or judgment in the conduct of his activities and social relationships so that he is in need of treatment.

(22) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.

(23) "Mentally retarded with accompanying behavior disorder" means an individual who is mentally retarded and who has a pattern of maladaptive behavior that is recognizable no later than adolescence and is characterized by gross outbursts of rage or physical aggression against other individuals or property.

(24) "Next of kin" means the individual designated in writing by the client or his legally responsible person upon the client's acceptance at a facility; provided that if no such designation has been made, "next of kin" means the client's spouse or nearest blood relation in accordance with G.S. 104A-1.

(25) "Operating costs" means expenditures made by an area authority in the delivery of services for mental health, developmental disabilities, and substance abuse as provided in this Chapter and includes the employment of legal counsel on a temporary basis to represent the interests of the area authority.

(26) Repealed by Session Laws 1987, c. 345, s. 1.

(26a) "Other recipient" means an individual who is not admitted to a facility but who receives a service other than care, treatment, or rehabilitation services. The services that the "other recipient" may receive include consultative, preventative, educational, and assessment services.

(27) "Outpatient treatment" as used in Part 7 of Article 5 means treatment in an outpatient setting and may include medication, individual or group therapy, day or partial day programming activities, services and training including educational and vocational activities, supervision of living arrangements, and any other services prescribed either to alleviate the individual's illness or disability, to maintain semi-independent functioning, or to prevent further deterioration that may reasonably be predicted to result in the need for inpatient commitment to a 24-hour facility.

(28) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, agency, or area authority.

(29) "Physician" means an individual licensed to practice medicine in North Carolina under Chapter 90 of the General Statutes or a licensed medical doctor employed by the Veterans Administration.

(30) "Provider of support services" means a person that provides to a facility support services such as data processing, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, including human services.

(30a) "Psychologist" means an individual licensed to practice psychology under Chapter 90. The term "eligible psychologist" is defined in subdivision (13a).

(31) **(Effective until July 1, 1999. See notes)** "Qualified professional" means any individual with appropriate training or experience as specified by the General Statutes or by rule of the Commission in the fields of mental health or developmental disabilities or substance abuse treatment or habilitation, including physicians, psychologists, psychological associates, educators, social workers, registered nurses, certified fee-based practicing pastoral counselors, and certified counselors.

(31) **(Effective July 1, 1999. See notes)** "Qualified professional" means any individual with appropriate training or experience as specified by the General Statutes or by rule of the Commission in the fields of mental health or developmental disabilities or substance abuse treatment or habilitation, including physicians, psychologists, psychological associates, educators, social workers, registered nurses, and certified counselors.

(32) "Responsible professional" means an individual within a facility who is designated by the facility director to be

responsible for the care, treatment, habilitation, or rehabilitation of a specific client and who is eligible to provide care, treatment, habilitation, or rehabilitation relative to the client's disability.

(33) "Secretary" means the Secretary of the Department of Health and Human Services.

(33a) "Severe and persistent mental illness" means a mental disorder suffered by persons of 18 years of age or older that leads these persons to exhibit emotional or behavioral functioning that is so impaired as to interfere substantially with their capacity to remain in the community without supportive treatment or services of a long term or indefinite duration. This disorder is a severe and persistent mental disability, resulting in a long-term limitation of functional capacities for the primary activities of daily living, such as interpersonal relations, homemaking, self-care, employment, and recreation.

(34) "Single portal of entry and exit policy" means an admission and discharge policy for designated facilities that is adopted by an area authority and shall be approved by the Secretary before it is in force. The policy and its provisions shall be designed to promote quality client care in and among designated facilities. Furthermore, the policy shall be designed to integrate otherwise independent facilities into a unified and coordinated system, in which system the area authority shall be responsible for assuring that the individual client can receive services from the facility that is best able to meet his needs. However, the policy may not be inconsistent with any other provisions of the General Statutes or federal law, nor may the policy include the complete exclusion of clients from admission to any specific facility.

(35) "Single portal area" means the county or counties that comprise the catchment area of an area authority that has adopted a single portal of entry and exit policy.

(35a) "State resources" means State and federal funds and other receipts administered by the Division.

(36) "Substance abuse" means the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. "Substance abuse" may include a pattern of tolerance and withdrawal.

(37) "Substance abuser" means an individual who engages in substance abuse. (1899, c. 1, s. 28; Rev., s. 4574; C.S., s. 6189; 1945, c. 952, s. 18; 1947, c. 537, s. 12; 1949, c. 71, s. 3; 1955, c. 887, s. 1; 1957, c. 1232, s. 13; 1959, c. 1028, s. 4; 1963, c. 1166, ss. 2, 10; c. 1184, s. 1; 1965, c. 933; 1973, c. 475, s. 2; c. 476, s. 133; c. 726, s. 1; c. 1408, ss. 1, 3; 1977, c. 400, ss. 2, 12; c. 568, s. 1; c. 679, s. 7; 1977, 2nd Sess., c. 1134, s. 2; 1979, c. 164, ss. 3, 4; c. 171, s. 2; c. 358, ss. 2, 26; c. 915, s. 1; c. 751, s. 28; 1981, c. 51, ss. 2-4; c. 539, s. 1; 1983, c. 280; c. 383, s. 2; c. 638, s. 2; c. 718, s. 1; c. 864, s. 4; 1983 (Reg. Sess., 1984), c. 1110, s. 4; 1985, c. 589, s. 2; c. 695, s. 1; c. 777, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 7; 1987, c. 345, s. 1; c. 830, ss. 47(a), (b); 1989, c. 141, s. 8; c. 223; c. 486, s. 2; c. 625, s. 2; 1989 (Reg. Sess., 1990), c. 823, s. 11; c. 1003,

s. 2; c. 1024, s. 26(a); 1993, c. 321, s. 220(a)-(c); c. 375, s. 6; c. 396, ss. 1, 2; 1995, c. 249, s. 1; c. 406, s. 5; 1997-443, s. 11A.118(a); 1997-456, s. 27.)

Subdivision (31) set out twice. — The first version of subdivision (31) is effective until July 1, 1999. The second version of subdivision (31) is effective July 1, 1999.

Editor's Note. — Subdivisions (13a1) and (13b) were renumbered as subdivisions (13c) and (13d) pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Subdivisions (13a1) and (13b) were recodified as subdivisions (13c) and (13d) at the direction of the Revisor of Statutes.

Effect of Amendments. —

The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

ARTICLE 2.

Licensure of Facilities for the Mentally Ill, the Developmentally Disabled, and Substance Abusers.

§ 122C-22. Exclusions from licensure; deemed status.

(a) The following are excluded from the provisions of this Article and are not required to obtain licensure under this Article:

(1) Physicians and psychologists engaged in private office practice;

(2) General hospitals licensed under Article 5 of Chapter 131E of the General Statutes, that operate special units for the mentally ill, developmentally disabled, or substance abusers;

(3) State and federally operated facilities;

(4) Adult care homes licensed under Chapter 131D of the General Statutes;

(5) Developmental child care centers licensed under Article 7 of Chapter 110 of the General Statutes;

(6) Persons subject to licensure under rules of the Social Services Commission;

(7) Persons subject to rules and regulations of the Division of Vocational Rehabilitation Services; and

(8) Facilities that provide occasional respite care for not more than two individuals at a time; provided that the primary purpose of the facility is other than as defined in G.S. 122C-3(14).

(b) The Commission may adopt rules establishing a procedure whereby a licensable facility certified by a nationally recognized agency, such as the Joint Commission on Accreditation of Hospitals, may be deemed licensed under this Article by the Secretary. Any facility licensed under the provisions of this subsection shall continue to be subject to inspection by the Secretary. (1983, c. 718, s. 1;

1983 (Reg. Sess., 1984), c. 1110, s. 5; 1985, c. 589, s. 2; c. 695, s. 13; 1987, c. 345, s. 2; 1989, c. 625, s. 5; 1995, c. 535, s. 7; 1997-506, s. 43.)

Effect of Amendments. — The 1997 amendment, effective September 16, 1997, deleted the dash between "federally" and "operated" in subdivision (a)(3); and substituted "child care" for "child day care" in subdivision (a)(5).

Article 3.

Clients' Rights and Adverse Instruction.

Part 1. Client's Rights.

§ 122C-57. Right to treatment and consent to treatment.

(a) Each client who is admitted to and is receiving services from a facility has the right to receive age-appropriate treatment for mental health, mental retardation, and substance abuse illness or disability. Each client within 30 days of admission to a facility shall have an individual written treatment or habilitation plan implemented by the facility. The client and the client's legally responsible person shall be informed in advance of the potential risks and alleged benefits of the treatment choices.

(b) Each client has the right to be free from unnecessary or excessive medication. Medication shall not be used for punishment, discipline, or staff convenience.

(c) Medication shall be administered in accordance with accepted medical standards and only upon the order of a physician as documented in the client's record.

(d) Each voluntarily admitted client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment.

(d1) Except as provided in G.S. 90-21.4, discharge of a voluntarily admitted minor from treatment shall include notice to and consultation with the minor's legally responsible person and in no event shall a minor be discharged from treatment upon the minor's request alone.

(e) In the case of an involuntarily committed client, treatment measures other than those requiring express written consent as specified in subsection (f) of this section may be given despite the refusal of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment in the event of an emergency or when consideration of side effects related to the specific treatment measure is given and in the professional judgment, as documented in the client's record, of the treating physician and a second physician, who is either the director of clinical services of the facility, or the director's designee, either:

(1) The client, without the benefit of the specific treatment measure, is incapable of participating in any available treatment plan which will give the client a realistic opportunity of improving the client's condition;

(2) There is, without the benefit of the specific treatment measure, a significant possibility that the client will harm self or others before improvement of the client's condition is realized.

(f) Treatment involving electroshock therapy, the use of experimental drugs or procedures, or surgery other than emergency surgery may not be given without the express and informed written consent of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment. This consent may be withdrawn at any time by the person who gave the consent. The Commission may adopt rules specifying other therapeutic and diagnostic procedures that require the express and informed written consent of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment prior to their initiation. (1973, c. 475, s. 1; c. 1436, ss. 6, 7; 1981, c. 328, ss. 1, 2; 1985, c. 589, s. 2; 1995, c. 336, s. 1; 1997-442, s. 3.)

Effect of Amendments. — The 1997 amendment, effective January 1, 1998, inserted "a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment" twice in subsections (d) and (f), and in subsection (e); and made stylistic changes.

§ 122C-60. Use of physical restraints or seclusion.

Editor's Note. — Session Laws 1997-443, s. 11.48, provides that the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services adopt temporary rules to implement the forensic treatment program at Dorothea Dix Hospital.

§ 122C-62. Additional rights in 24-hour facilities.

(a) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-61, each adult client who is receiving treatment or habilitation in a 24-hour facility keeps the right to:

(1) Send and receive sealed mail and have access to writing material, postage, and staff assistance when necessary;

(2) Contact and consult with, at his own expense and at no cost to the facility, legal counsel, private physicians, and private mental health, developmental disabilities, or substance abuse professionals of his choice; and

(3) Contact and consult with a client advocate if there is a client advocate.

The rights specified in this subsection may not be restricted by the facility and each adult client may exercise these rights at all reasonable times.

(b) Except as provided in subsections (e) and (h) of this section, each adult client who is receiving treatment or habilitation in a 24-hour facility at all times keeps the right to:

(1) Make and receive confidential telephone calls. All long distance calls shall be paid for by the client at the time of making the call or made collect to the receiving party;

(2) Receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two hours of which shall be after 6:00 p.m.; however visiting shall not take precedence over therapies;

(3) Communicate and meet under appropriate supervision with individuals of his own choice upon the consent of the individuals;

(4) Make visits outside the custody of the facility unless:

a. Commitment proceedings were initiated as the result of the client's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding;

b. The client was voluntarily admitted or committed to the facility while under order of commitment to a correctional facility of the Department of Correction; or

c. The client is being held to determine capacity to proceed pursuant to G.S. 15A-1002;

A court order may expressly authorize visits otherwise prohibited by the existence of the conditions prescribed by this subdivision;

(5) Be out of doors daily and have access to facilities and equipment for physical exercise several times a week;

(6) Except as prohibited by law, keep and use personal clothing and possessions, unless the client is being held to determine capacity to proceed pursuant to G.S. 15A-1002;

(7) Participate in religious worship;

(8) Keep and spend a reasonable sum of his own money;

(9) Retain a driver's license, unless otherwise prohibited by Chapter 20 of the General Statutes; and

(10) Have access to individual storage space for his private use.

(c) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-57 and G.S. 122C-59 through G.S. 122C-61, each minor client who is receiving treatment or habilitation in a 24-hour facility has the right to have access to proper adult supervision and guidance. In recognition of the minor's status as a developing individual, the minor shall be provided opportunities to enable him to mature physically, emotionally, intellectually, socially, and vocationally. In view of the physical, emotional, and intellectual immaturity of the minor, the 24-hour facility shall provide appropriate structure, supervision and control consistent with the rights given to the minor pursuant to this Part. The facility shall also, where practical, make reasonable efforts to ensure that each minor client receives treatment apart and separate from adult clients unless the treatment needs of the minor client dictate otherwise.

Each minor client who is receiving treatment or habilitation from a 24-hour facility has the right to:

(1) Communicate and consult with his parents or guardian or the agency or individual having legal custody of him;

(2) Contact and consult with, at his own expense or that of his legally responsible person and at no cost to the facility, legal counsel, private physicians, private mental health, developmental disabilities, or substance abuse professionals, of his or his legally responsible person's choice; and

(3) Contact and consult with a client advocate, if there is a client advocate.

The rights specified in this subsection may not be restricted by the facility and each minor client may exercise these rights at all reasonable times.

(d) Except as provided in subsections (e) and (h) of this section, each minor client who is receiving treatment or habilitation in a 24-hour facility has the right to:

(1) Make and receive telephone calls. All long distance calls shall be paid for by the client at the time of making the call or made collect to the receiving party;

(2) Send and receive mail and have access to writing materials, postage, and staff assistance when necessary;

(3) Under appropriate supervision, receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two hours of which shall be after 6:00 p.m.; however visiting shall not take precedence over school or therapies;

(4) Receive special education and vocational training in accordance with federal and State law;

(5) Be out of doors daily and participate in play, recreation, and physical exercise on a regular basis in accordance with his needs;

(6) Except as prohibited by law, keep and use personal clothing and possessions under appropriate supervision, unless the client is being held to determine capacity to proceed pursuant to G.S. 15A-1002;

(7) Participate in religious worship;

(8) Have access to individual storage space for the safekeeping of personal belongings;

(9) Have access to and spend a reasonable sum of his own money; and

(10) Retain a driver's license, unless otherwise prohibited by Chapter 20 of the General Statutes.

(e) No right enumerated in subsections (b) or (d) of this section may be limited or restricted except by the qualified professional responsible for the formulation of the client's treatment or habilitation plan. A written statement shall be placed in the client's record that indicates the detailed reason for the restriction. The restriction shall be reasonable and related to the client's treatment or habilitation needs. A restriction is effective for a period not to exceed 30 days. An evaluation of each restriction shall be conducted by the qualified professional at least every seven days, at which time the restriction may be removed. Each evaluation of a restriction shall be documented in the client's record. Restrictions on rights may be renewed only by a written statement entered by the qualified professional in the client's record that states the reason for the renewal of the restriction. In the case of an adult client who has not been adjudicated incompetent, in each instance of an initial restriction or renewal of a restriction of rights, an individual designated by the client shall, upon the consent of the client, be notified of the restriction and of the reason for it. In the case of a minor client or an incompetent adult client, the legally responsible person shall be notified of each instance of an initial restriction or renewal of a restriction of rights and of the reason for it. Notification of the designated individual or legally responsible person shall be documented in writing in the client's record.

(f) The Commission may adopt rules to implement subsection (e) of this section.

(g) With regard to clients being held to determine capacity to proceed pursuant to G.S. 15A-1002 or clients in a facility for substance abuse, and notwithstanding the prior provisions of this section, the Commission may adopt rules restricting the rights set forth under (b)(2), (b)(3), and (d)(3) of this section if restrictions are necessary and reasonable in order to protect the health, safety, and welfare of the client involved or other clients.

(h) The rights stated in subdivisions (b)(2), (b)(4), (b)(5), (b)(10), (d)(3), (d)(5) and (d)(8) may be modified in a general hospital by that hospital to be the same as for other patients in that hospital; provided that any restriction of a specific client's rights shall be done in accordance with the provisions of subsection (e) of this section. (1973, c. 475, s. 1; c. 1436, ss. 2-5, 8; 1985, c. 589, s. 2; 1989, c. 625, s. 10; 1995, c. 299, s. 2; 1997-456, s. 27.)

Editor's Note. — As the text that formerly made up this Article has been recodified as Part 1 of this article by S.L. 1997-442, the term "this Part" was substituted for "this Article" in the third sentence of subsection (c) by direction of the Revisor of Statutes.

§§ 122C-68 through 122C-70: Reserved for future codification purposes.

Part 2. Advance Instruction for Mental Health Treatment.

§ 122C-71. Purpose.

(a) The General Assembly recognizes as a matter of public policy the fundamental right of an individual to control the decisions relating to the individual's medical care, and that this right may be exercised on behalf of the individual by an agent chosen by the individual.

(b) The purpose of this Part is to establish an additional, nonexclusive method for an individual to exercise the right to consent to or refuse mental health treatment when the individual lacks sufficient understanding or capacity to make or communicate mental health treatment decisions.

(c) This Part is intended and shall be construed to be consistent with the provisions of Article 3 of Chapter 32A of the General

Statutes, provided that in the event of a conflict between the provisions of this Part and Article 3 of Chapter 32A, the provisions of this Part control. (1997-442, s. 2.)

Editor's Note. — Session Laws 1997-442, s. 4, made this Part effective January 1, 1998.

§ 122C-72. Definitions.

As used in this Part, unless the context clearly requires otherwise, the following terms have the meanings specified:

(1) "Advance instruction" or "advance instruction for mental health treatment" means a written instrument, signed by two qualified witnesses, that makes a declaration of instructions, that also provides information and preferences regarding mental health treatment, and that may appoint an attorney-in-fact.

(2) "Attending physician" means the physician who has primary responsibility for the care and treatment of the principal.

(3) "Attorney-in-fact" means an adult validly appointed under G.S. 122C-75 to make mental health treatment decisions for a principal under an advance instruction for mental health treatment and also means an alternative attorney-in-fact.

(4) "Incapable" means that, in the opinion of a physician or eligible psychologist, the person currently lacks the capacity to make and communicate mental health treatment decisions. As used in this subdivision, the term "eligible psychologist" has the meaning given the term in G.S. 122C-3(13b).

(5) "Mental health treatment" means the process of providing for the physical, emotional, psychological, and social needs of the principal for the principal's mental illness. "Mental health treatment" includes, but is not limited to, electroconvulsive treatment (ECT), commonly referred to as "shock treatment', treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness.

(6) "Principal" means the person making the advance instruction.

(7) "Qualified witness" means a witness who affirms that the principal is personally known to the witness, that the principal signed or acknowledged the principal's signature on the advance instruction in the presence of the witness, that the witness believes the principal to be of sound mind and not to be under duress, fraud, or undue influence, and that the witness is not:

a. The attending physician or mental health service provider or a relative of the physician or provider; or

b. An owner, operator, or relative of an owner or operator of a health care facility in which the principal is a patient or resident. (1997-442, s. 2.)

§ 122C-73. Scope, use, and authority of advance instruction for mental health treatment.

(a) Any adult of sound mind may make an advance instruction regarding mental health treatment. The advance instruction may include consent to or refusal of mental health treatment. The advance instruction may also appoint an attorney-in-fact.

(b) An advance instruction may include, but is not limited to, the names and telephone numbers of individuals to be contacted in case of mental health crisis, situations that may cause the principal to experience a mental health crisis, responses that may assist the principal to remain in the principal's home during a mental health crisis, the types of assistance that may help stabilize the principal if it becomes necessary to enter a facility, and medications that the principal is taking or has taken in the past and the effects of those medications.

(c) A person shall not be required to execute or to refrain from executing an advance instruction as a condition for insurance coverage, as a condition for receiving mental or physical health services, as a condition for receiving privileges while in a facility, or as a condition of discharge from a facility.

(d) A principal may nominate, by advance instruction for mental health treatment, the guardian of the person of the principal if a guardianship proceeding is thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in an unrevoked advance instruction for mental health treatment, except for good cause shown.

(e) If, following the execution of an advance instruction for mental health treatment, a court of competent jurisdiction appoints a guardian of the person of the principal, or a general guardian with powers over the person of the principal, the advance instruction for mental health treatment shall remain in effect and shall be superior to the powers and duties of the guardian of the person with respect to mental health treatment covered under the advance instruction.

(f) An advance instruction for mental health treatment may be combined with or incorporated into a health care power of attorney or general power of attorney that is executed in accordance with the requirements of Chapter 32A of the General Statutes. (1997-442, s. 2.)

§ 122C-74. Effectiveness and duration; revocation.

(a) A validly executed advance instruction becomes effective when it is delivered to the principal's physician or other mental health treatment provider and remains valid until revoked or expired. The physician or provider shall act in accordance with an advance instruction when the principal has been determined to be incapable. The physician or provider shall continue to obtain the principal's informed consent to all mental health treatment decisions as required by law.

(b) Upon being presented with an advance instruction, a physician or other provider shall make the advance instruction a part of the principal's medical record. When acting under authority of an advance instruction, a physician or provider shall comply with it to the fullest extent possible, unless compliance is not consistent with:

(1) Best medical practice to benefit the principal;
(2) The availability of treatments requested; and
(3) Applicable law.

If the physician or other provider is unwilling at any time to comply with any part or parts of an advance instruction for one or more of the reasons set out in subdivisions (1) through (3) of this subsection, the physician or provider shall promptly notify the principal and, if applicable, the attorney-in-fact, and shall document the reason for not complying with the advance instruction and shall document the notification in the principal's medical record.

(c) Except as provided in subsection (b) of this section, the physician or provider may subject the principal to mental health treatment in a manner contrary to the principal's instructions as expressed in an advance instruction for mental health treatment only:

(1) If the principal is committed to a 24-hour facility pursuant to Article 5 of G.S. 122C and treatment is authorized in compliance with G.S. 122C-57 and administrative rule; or
(2) In cases of emergency endangering life or health.

(d) An advance instruction does not limit any authority provided in Article 5 of G.S. 122C either to take a person into custody, or to admit, retain, or treat a person in a facility.

(e) An advance instruction for mental health treatment continues in effect for a period of two years, unless revoked. An advance instruction may be revoked in whole or in part at any time by the principal if the principal is capable. A revocation is effective when a capable principal communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the principal's medical record. The authority of a named attorney-in-fact and any alternative attorney-in-fact named in the advance instruction continues in effect as long as the advance instruction appointing the attorney-in-fact is in effect or until the attorney-in-fact has withdrawn.

(f) A physician or provider who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of an advance instruction is not subject to criminal prosecution, civil liability, or professional disciplinary action resulting from a subsequent finding of an advance instruction's invalidity. (1997-442, s. 2.)

§ 122C-75. Scope of authority of attorney-in-fact; powers and duties; limitation on liability.

(a) An advance instruction may designate a competent adult to act as attorney-in-fact to make decisions about mental health treatment. An alternative attorney-in-fact may also be designated to act as attorney-in-fact if the original designee is unable or unwilling to act at any time. An attorney-in-fact who has accepted the appointment in writing may make decisions about mental health treatment on behalf of the principal only when the principal is incapable. The decisions shall be consistent with any desires the principal has expressed in the advance instruction.

(b) None of the following may serve as attorney-in-fact:

(1) The attending physician or mental health service provider or an employee of the physician or provider, if the physi-

cian, provider, or employee is unrelated to the principal by blood, marriage, or adoption.

(2) An owner, operator, or employee of a health care facility in which the principal is a patient or resident, if the owner, operator, or employee is unrelated to the principal by blood, marriage, or adoption.

(c) The attorney-in-fact shall not have authority to make mental health treatment decisions unless the principal is incapable.

(d) The attorney-in-fact is not, as a result of acting in that capacity, personally liable for the cost of treatment provided to the principal.

(e) Except to the extent the right is limited by the advance instruction or any federal law, an attorney-in-fact has the same right as the principal to receive information regarding the proposed mental health treatment and to receive, review, and consent to disclosure of medical records relating to that treatment. This right of access does not waive any evidentiary privilege.

(f) In exercising authority under the advance instruction, the attorney-in-fact shall act consistently with the desires of the principal as expressed in the advance instruction. If the principal's desires are not expressed in the advance instruction and are not otherwise known by the attorney-in-fact, the attorney-in-fact shall act in what the attorney-in-fact in good faith believes to be the manner in which the principal would act if the principal was not incapable.

(g) The appointment of an attorney-in-fact shall not revoke, restrict, or otherwise affect any nonmental health treatment powers granted by the principal to a health care agent pursuant to a health care power of attorney or attorney-in-fact pursuant to a general power of attorney; provided that the mental health treatment powers granted to the attorney-in-fact shall be superior to any similar powers granted by the principal to a health care agent pursuant to a health care power of attorney or an attorney-in-fact pursuant to a general power of attorney.

(h) An attorney-in-fact is not subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to an advance instruction for mental health treatment.

(i) An attorney-in-fact may withdraw by giving notice to the principal. If a principal is incapable, the attorney-in-fact may withdraw by giving notice to the attending physician or provider. The attending physician or provider shall note the withdrawal as part of the principal's medical record.

(j) A person who has withdrawn under the provision of subsection (i) of this section may rescind the withdrawal by executing an acceptance after the date of the withdrawal. The acceptance shall be in the same or similar form as provided for in G.S. 122C-77 for accepting an appointment. A person who rescinds a withdrawal shall give notice to the principal if the principal is capable or to the principal's health care provider if the principal is incapable. (1997-442, s. 2.)

§ 122C-76. Penalty.

It is a Class 2 misdemeanor for a person, without authorization of the principal, willfully to alter, forge, conceal, or destroy an instrument, the reinstatement or revocation of an instrument, or any other evidence or document reflecting the principal's desires and interests, with the intent or effect of affecting a mental health treatment decision. (1997-442, s. 2.)

§ 122C-77. Statutory form for advance instruction for mental health treatment.

The use of the following or similar form in the creation of an advance instruction for mental health treatment is lawful, and when used, it shall be construed in accordance with the provisions of this Article.

"ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT

I, ________, being an adult of sound mind, willfully and voluntarily make this advance instruction for mental health treatment to be followed if it is determined by a physician or eligible psychologist that my ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health treatment. "Mental health treatment" means the process of providing for the physical, emotional, psychological, and social needs of the principal. "Mental health treatment" includes electroconvulsive treatment (ECT), commonly referred to as "shock treatment', treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness.

I understand that psychoactive medications and electroconvulsive treatment (ECT) (commonly referred to as "shock treatment') may not be administered without my express and informed written consent or, if I am incapable of giving my informed consent, the express and informed written consent of my legally responsible person, health care agent named pursuant to a valid health care power of attorney, or attorney-in-fact named pursuant to a valid advance instruction for mental health treatment, as required under G.S. 122C-57.

I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:

____

PSYCHOACTIVE MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my instructions regarding psychoactive medications are as follows:

____ I consent to the administration of the following medications:

____

____

____ I do not consent to the administration of the following medications:

____

____

Conditions or limitations: ________________________________

____

ADMISSION TO AND RETENTION IN FACILITY

If I become incapable of giving or withholding informed consent for mental health treatment, my instructions regarding admission to and retention in a health care facility for mental health treatment are as follows:

____ I consent to being admitted to a health care facility for mental health treatment.

My facility preference is ____________________

____ I do not consent to being admitted to a health care facility for mental health treatment.

This advance instruction cannot, by law, provide consent to retain me in a facility for more than 10 days.

Conditions or limitations: ____________________

____

ADDITIONAL INSTRUCTIONS

These instructions shall apply during the entire length of my incapacity.

In case of mental health crisis, please contact:

1. Name:
   Home Address: ____________________
   Home Telephone Number: __________ Work Telephone Number: ____________________
   Relationship to Me: ____________________
2. Name: ____________________
   Home Address: ____________________
   Home Telephone Number: __________ Work Telephone Number: ____________________
   Relationship to Me: ____________________
3. My Physician:
   Name: ____________________
   Telephone Number : ____________________
4. My Therapist:
   Name: ____________________
   Telephone Number: ____________________

The following may cause me to experience a mental health crisis: ____________________

____

The following may help me avoid a hospitalization: __________

____

____

I generally react to being hospitalized as follows: __________

____

____

Staff of the hospital or crisis unit can help me by doing the following:

____

____

____

I give permission for the following person or people to visit me:

____

____

____

____

Instructions concerning any other medical interventions, such as electroconvulsive (ECT) treatment (commonly referred to as "shock treatment"): ____________________

Other instructions:

_____ I have attached an additional sheet of instructions to be followed and considered part of this advance instruction.

ATTORNEY-IN-FACT

I hereby appoint:

Name: _____

Home Address: _____

Home Telephone Number: _____ Work Telephone Number: _____

to act as my attorney-in-fact to make decisions regarding my mental health treatment if I become incapable of giving or withholding informed consent for that treatment.

If the person named above refuses or is unable to act on my behalf, or if I revoke that person's authority to act as my attorney-in-fact, I authorize the following person to act as my attorney-in-fact:

Name: _____

Home Address: _____

Home Telephone Number: _____ Work Telephone Number: _____

My attorney-in-fact is authorized to make decisions that are consistent with the instructions I have expressed in this advance instruction or, if not expressed, as are otherwise known by my attorney-in-fact, my attorney-in-fact is to act in what he or she believes to be my best interests.

If it becomes necessary for the court to appoint a guardian for me, I hereby nominate my attorney-in-fact to serve in that capacity.

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my attorney-in-fact.

_____

Signature of Principal Date

AFFIRMATION OF WITNESSES

We affirm that the principal is personally known to us, that the principal signed or acknowledged the principal's signature on this advance instruction for mental health treatment in our presence, that the principal appears to be of sound mind and not under duress, fraud, or undue influence, and that neither of us is:

A person appointed as an attorney-in-fact by this document;

The principal's attending physician or mental health service provider or a relative of the physician or provider;

The owner, operator, or relative of an owner or operator of a facility in which the principal is a patient or resident; or

A person related to the principal by blood, marriage, or adoption.

Witnessed by:
Witness: ________________________ Date: ________
Witness: ________________________ Date: ________
STATE OF NORTH CAROLINA
COUNTY OF ____________________

ACCEPTANCE OF APPOINTMENT AS ATTORNEY-IN-FACT

I accept this appointment and agree to serve as attorney-in-fact to make decisions about mental health treatment for the principal. I understand that I have a duty to act consistent with the desires of the principal as expressed in this appointment. I understand that this document gives me authority to make decisions about mental health treatment only while the principal is incapable as determined by a qualified crisis services professional and a physician or eligible psychologist. I understand that the principal may revoke this advance instruction in whole or in part at any time and in any manner when the principal is not incapable.

________________________ ________
Signature of Attorney-in-fact Date

________________________ ________
Signature of Alternative Attorney-in-fact Date

(1997-442, s. 2.)

ARTICLE 4.

Organization and System for Delivery of Mental Health, Developmental Disabilities, and Substance Abuse Services.

Part 2. State, County and Area Authority.

§ 122C-112. Powers and duties of the Secretary.

(a) The Secretary shall:

(1) Enforce the provisions of this Chapter and the rules of the Commission and the Secretary;

(2) Assist counties and area authorities in the establishment and operation of community-based programs within catchment areas specified in rules adopted by the Commission;

(3) Operate State facilities and adopt rules pertaining to their operation;

(4) Promote a unified system of services for the citizens of this State by coordinating services provided in State facilities and area facilities;

(5) Approve the plans and budgets of an area authority and adopt rules pertaining to the content and format of these plans and budgets;

(6) Adopt rules governing the expenditure of all area authority funds;

(6a) Adopt rules to implement the appeal procedure authorized by G.S. 122C-151.2;

(7) Adopt rules for the establishment of single portal designation and approve an area as a single portal area;

(8) Except as provided in G.S. 122C-26(4), adopt rules establishing procedures for waiver of rules adopted by the Secretary under this Chapter;

(9) Notify the clerks of superior court of changes in the designation of State facility regions and of facilities designated under G.S. 122C-252;

(10) Promote public awareness and understanding of mental health, mental illness, developmental disabilities, and substance abuse;

(11) Administer and enforce rules that are conditions of participation in federal or State financial aid;

(12) Carry out G.S. 122C-361; and

(13) Ensure, in cooperation with other appropriate agencies, that all types of early intervention services specified in the "Individuals with Disabilities Education Act (IDEA), P.L. 102-119, the federal early intervention legislation, are available to all eligible infants and toddlers and their families to the extent funded by the General Assembly.

The Secretary shall coordinate and facilitate the development and administration of the early intervention system for eligible infants and toddlers and shall assign among the cooperating agencies the responsibility, including financial responsibility, for services. The Secretary shall be advised by the Interagency Coordinating Council for Children from Birth to Five with Disabilities and Their Families, established by G.S. 143B-179.5, and may enter into formal interagency agreements to establish the collaborative relationships with the Department of Public Instruction, other appropriate agencies, and other public and private service providers necessary to administer the system and deliver the services.

The Secretary shall adopt rules to implement the early intervention system, in cooperation with all other appropriate agencies;

(14) Adopt rules to be followed in the determination of eligibility for, and to ensure the provision of services for, eligible assaultive and violent children as defined in G.S. 122C-3(13a); [and]

(15) Upon the death of any prospective or confirmed Thomas S. class member as identified in Thomas S. et al. vs. Britt, (C-C-82-0418-M, Western District) not residing in a State facility listed in G.S. 122C-181, investigate the circumstances leading to that death. The investigation shall analyze any unusual circumstances relating to the death. The Secretary shall adopt rules to implement this subsection. The Secretary shall have access to all medical records, hospital records, and records maintained by the State, any county, or any local agency necessary to carry out the purposes of this subsection, including police investigations data, medical examiner investigative data, health records, mental health records, and social services records.

(b) The Secretary may:

(1) Acquire by purchase or otherwise in the name of the Department equipment, supplies, and other personal property necessary to carry out the mental health, developmental disabilities, and substance abuse programs;

(2) Sponsor training opportunities in the fields of mental health, developmental disabilities, and substance abuse;
(3) Promote and conduct research in the fields of mental health, developmental disabilities, and substance abuse;
(4) Provide technical assistance for the development and improvement of prevention services;
(5) Receive donations of money, securities, equipment, supplies, or any other personal property of any kind or description which shall be used by the Secretary for the purpose of carrying out mental health, developmental disabilities, and substance abuse programs. Any donations shall be reported to the Office of State Budget and Management as determined by that office;
(6) Accept, allocate, and spend any federal funds for mental health, developmental disabilities, and substance abuse activities that may be made available to the State by the federal government. This Chapter shall be liberally construed in order that the State and its citizens may benefit fully from these funds. Any federal funds received shall be deposited with the State Treasurer and shall be appropriated by the General Assembly for the mental health, developmental disabilities, or substance abuse purposes specified;
(7) Enter agreements authorized by G.S. 122C-346;
(8) Accept, allocate, and spend funds from the United States Department of Defense to operate mental health demonstration projects for families of the uniformed services. Demonstration projects shall be operated through an area authority. The operation of these demonstration projects may be accomplished through subcontracts with one or more private sector providers; and
(9) Authorize funds for contracting with a person, firm, or corporation for aid or assistance in locating, recruiting, or arranging employment of health care professionals in any facility listed in G.S. 122C-181, notwithstanding the provisions of G.S. 126-18. (C.S., s. 6153; 1929, c. 265, s. 1; 1933, c. 342, s. 1; 1943, cc. 32, 164; 1945, c. 952, s. 9; 1947, c. 537, ss. 5, 6; 1957, c. 1232, s. 1; 1959, c. 348, s. 3; c. 1002, s. 3; c. 1028, ss. 1-3, 5; 1963, c. 451, s. 1; c. 1166, ss. 3, 6, 10; c. 1184, s. 6; 1965, c. 800, s. 1; c. 929, s. 3; 1969, c. 676, s. 2; 1971, c. 470, s. 1; 1973, c. 476, s. 133; c. 661; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 2-4, 23; 1981, c. 51, ss. 3, 4; c. 539, s. 1; 1983, c. 280; c. 383, s. 2; 1985, c. 589, s. 2; 1987, c. 720, s. 2; c. 830, s. 47(c); 1989, c. 625, s. 14; 1989 (Reg. Sess., 1990), c. 1003, s. 3; 1991, c. 689, s. 135; 1993, c. 321, s. 220(p); c. 487, s. 2; 1995, c. 249, s. 2; c. 498, s. 1; 1997-443, s. 11A.53.)

Editor's Note. —

Session Laws 1997-7, s. 1, provides that the Secretary of the Department of Human Resources shall dissolve all area mental health, mental retardation, and substance abuse authorities that are comprised of three counties at least two of which each have a population of 90,000 or more according to the most recent decennial federal census. Prior to dissolution, the Secretary shall make the necessary and appropriate provisions relating to personnel and other matters, and dealing with the distribution of the assets and liabilities of the area authority. The dissolution shall take effect not later than June 30, 1997. The Secretary shall permit counties that were part of an area authority dissolved pursuant to this act to provide mental health services as a single-county area authority or to align with another single-county or multicounty area authority.

Session Laws 1997-280, s. 1, provides in part that S.L. 1997-7, notwithstanding, the Department of Human Resources may continue to administer the services of the Tri-County Area Authority in accordance with G.S. 122C-125.1 and the extension granted under this section shall be for a period not to exceed three calendar months commencing July 1, 1997, and shall be for the sole purpose of allowing one or more of the counties that constitute the Tri-County Area Authority to assess the feasibility of combining with another existing area authority.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'."

Session Laws 1997-443, s. 11.35, provides for the funding of treatment and education programs for children under the age of 18 who suffer from emotional, mental, or neurological handicaps accompanied by violent or assaultive behavior, identified as a Class in the case of Willie M., et al v. Hunt, et al., and defined in G.S. 122C-3(13a) as Eligible Assaultive and Violent Children.

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, deleted "the Department of Environment, Health, and Natural Resources" preceding "the Department of Public Instruction" in the second paragraph of subdivision (a)(13).

§ 122C-113. Cooperation between Secretary and other agencies.

(a) The Secretary shall cooperate with other State agencies to coordinate services for the treatment and habilitation of individuals who are mentally ill, developmentally disabled, or substance abusers. The Secretary shall also coordinate with these agencies to provide public education to promote a better understanding of mental illness, developmental disabilities, and substance abuse.

(b) The Secretary shall promote cooperation among area facilities, State facilities, and local agencies to facilitate the provision of services to individuals who are mentally ill, developmentally disabled, or substance abusers.

(b1) The Secretary shall cooperate with the State Board of Education in coordinating the responsibilities of the Department of Health and Human Services, the State Board of Education, and the Department of Public Instruction for adolescent substance abuse programs. The Department of Health and Human Services, through its Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall be responsible for intervention and treatment in non-school based programs. The State Board of Education and the Department of Public Instruction shall have primary responsibility for in-school education, identification, and intervention services, including student assistance programs.

(c) The Secretary shall adopt rules to assure this coordination. (1963, c. 1166, s. 3; 1973, c. 476, s. 133; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1985, c. 589, s. 2; 1987, c. 863, s. 1; 1989, c. 625, s. 14; 1993, c. 522, s. 9; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 122C-115. Powers and duties of counties and cities.

Editor's Note. — Session Laws 1997-7, s. 1, provides that the Secretary of the Department of Human Resources shall dissolve all area mental health, mental retardation, and substance abuse authorities that are comprised of three counties at least two of which each have a population of 90,000 or more according to the most recent decennial federal census. Prior to dissolution, the Secretary shall make the necessary and appropriate provisions relating to personnel and other matters, and dealing with the distribution of the assets and liabilities of the area authority. The dissolution shall take effect not later than June 30, 1997. The Secretary shall permit counties that were part of an area authority dissolved pursuant to this act to provide mental health services as a single-county area authority or to align with another single-county or multicounty area authority.

Session Laws 1997-280, s. 1, provides in part that S.L. 1997-7, notwithstanding, the Department of Human Resources may continue to administer the services of the Tri-County Area Authority in accordance with G.S. 122C-125.1 and the extension granted under this section shall be for a period not to exceed three calendar months commencing July 1, 1997, and shall be for the sole purpose of allowing one or more of the counties that constitute the Tri-County Area Authority to assess the feasibility of combining with another existing area authority.

§ 122C-116. Status of area authority; status of consolidated human services agency.

Editor's Note. — Session Laws 1997-7, s. 1, provides that the Secretary of the Department of Human Resources shall dissolve all area mental health, mental retardation, and substance abuse authorities that are comprised of three counties at least two of which each have a population of 90,000 or more according to the most recent decennial federal census. Prior to dissolution, the Secretary shall make the necessary and appropriate provisions relating to personnel and other matters, and dealing with the distribution of the assets and liabilities of the area authority. The dissolution shall take effect not later than June 30, 1997. The Secretary shall permit counties that were part of an area authority dissolved pursuant to this act to provide mental health services as a single-county area authority or to align with another single-county or multicounty area authority.

Session Laws 1997-280, s. 1, provides in part that S.L. 1997-7, notwithstanding, the Department of Human Resources may continue to administer the services of the Tri-County Area Authority in accordance with G.S. 122C-125.1 and the extension granted under this section shall be for a period not to exceed three calendar months commencing July 1, 1997, and shall be for the sole purpose of allowing one or more of the counties that constitute the Tri-County Area Authority to assess the feasibility of combining with another existing area authority.

CASE NOTES

Cited in Cross v. Residential Support Servs., Inc., 123 N.C. App. 616, 473 S.E.2d 676 (1996).

§ 122C-117. Powers and duties of the area authority.

(a) The area authority shall:

(1) Engage in comprehensive planning, budgeting, implementing, and monitoring of community-based mental health, developmental disabilities, and substance abuse services;

(2) Provide services to clients in the catchment area;

(3) Determine the needs of the area authority's clients and coordinate with the Secretary the provision of services to clients through area and State facilities;

(4) Develop plans and budgets for the area authority subject to the approval of the Secretary;

(5) Assure that the services provided by the area authority meet the rules of the Commission and Secretary;

(6) Comply with federal requirements as a condition of receipt of federal grants; and

(7) Appoint an area director, chosen through a search committee on which the Secretary of the Department of Health and Human Services or the Secretary's designee serves as a nonvoting member.

(a1) The area authority may contract to provide services to governmental or private entities, including Employee Assistance Programs.

(b) The governing unit of the area authority is the area board. All powers, duties, functions, rights, privileges, or immunities conferred on the area authority may be exercised by the area board. (1971, c. 470, s. 1; 1973, c. 476, s. 133; c. 661; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 1, 3, 14, 23; 1981, c. 51, s. 3; 1983, c. 383, s. 1; 1985, c. 589, s. 2; 1987, c. 830, s. 47(d); 1989, c. 625, s. 14; 1991, c. 215, s. 1; 1995 (Reg. Sess., 1996), c. 749, s. 2; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

CASE NOTES

Cited in Cross v. Residential Support Servs., Inc., 123 N.C. App. 616, 473 S.E.2d 676 (1996).

§ 122C-118. Structure of area board.

(a) An area board shall have no less than 15 members and no more than 25 members. The size of the area board may be changed from time to time as follows:

(1) In a single-county area, by the board of county commissioners;

(2) In a multi-county area by agreement of the boards of county commissioners of all the counties in the catchment area. The agreement shall be evidenced by concurrent resolu-

tions adopted by the affected boards of county commissioners.

(b) In a single county area, the board of county commissioners shall appoint the members of the area board who may be removed with or without cause.

(c) In areas consisting of more than one county, each board of county commissioners within the area shall appoint one commissioner as a member of the area board. These members shall appoint the other members. A member may be removed, with or without cause, by the group authorized to make the initial appointment.

(c1) The group of county commissioners authorized to make appointments to the area board shall declare vacant the office of a member of the area board who does not attend three scheduled meetings without justifiable excuse within a 12-month period.

(d) The group of county commissioners authorized to make appointments to the area board shall appoint new members to the area board to fill vacancies occurring on the board before the end of the appointed term of office. These appointments are for the rest of the unexpired term of office.

(d1) Whenever a vacancy occurs on the board, it shall be filled within 120 days.

(e) The area board shall include:

(1) At least one county commissioner from each county in the area except that in a single-county area authority the board of commissioners may instead appoint any resident of the county;

(2) At least one physician licensed under Chapter 90 of the General Statutes to practice medicine in North Carolina who, when possible, is certified as having completed a residency in psychiatry;

(3) At least one professional representative from the fields either of psychology, social work, nursing, or religion;

(4) At least one individual each, either a primary consumer or an individual from a citizens' organization, representing the interests of individuals with:
  a. Mental illness; and
  b. Developmental disabilities.

(4a) At least one primary consumer presently and openly in recovery representing the interests of individuals suffering from alcoholism or other drug abuse.

(5) At least one family consumer each representing the interest of individuals with:
  a. Mental illness;
  b. Developmental disabilities; and
  c. Alcoholism or other drug abuse.

(6) At least one attorney licensed to practice in North Carolina.

(7) At least one member who has experience in finance and can understand and interpret audits and other financial reports.

(f) Any member of an area board who is a county commissioner serves on the board in an ex officio capacity. The terms of county commissioners on an area board are concurrent with their terms as county commissioners. The terms of the other members on the area board shall be for four years, except that upon the initial formation of an area board one fourth shall be appointed for one year, one fourth for two years, one fourth for three years, and all remaining

members for four years. (1971, c. 470, s. 1; 1973, c. 455; c. 476, s. 133; c. 1355; 1975, c. 400, ss. 1-4; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 1, 5, 6, 23; c. 455; 1981, c. 51, s. 3; c. 52; 1983, c. 6; c. 383, s. 1; 1985, c. 589, s. 2; 1989, c. 536; c. 625, s. 25.1; 1995 (Reg. Sess., 1996), c. 749, s. 3; 1997-456, s. 27.)

Editor's Note. —
Subdivision (e)(4.1) of this section was renumbered as subdivision (e)(4a) pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

§ 122C-124. Area Authority funding suspended.

(a) The Secretary of the Department of Health and Human Services, after providing written notification of its intent to the area board, may suspend funding to any area authority with a revenue or expenditure budget variance of ten percent (10%) or a significant deterioration in the fund balance of the authority's general fund. A significant deterioration of fund balance is defined as a twenty-five percent (25%) decrease in the balance from one fiscal year to the next without the prior approval of the Department. Area authorities shall report any such revenue or expenditure variance or deterioration in fund balance to the Department of Health and Human Services within 30 days of its occurrence. In the event that funding is suspended, the Department, after providing written notification of its intent to the area board and after providing the area authority an opportunity to be heard, may contract with, and make payments of Department funds on an interim basis directly to, a contract provider of the area authority to avoid the disruption of direct services to clients.

(b) If the Secretary determines that an area authority is not providing minimally adequate services, in accordance with its annual service plan, to persons in need in a timely manner, or fails to demonstrate reasonable efforts to do so, the Secretary, after providing written notification of the Secretary's intent to the area board and after providing the area authority an opportunity to be heard, may withhold funding for the particular service or services in question from the area authority and insure the provision of these services through contracts with public or private agencies or by direct operation by the Department.

(c) Upon suspension of funding, the Department shall, in conjunction with the area authority, develop and implement a corrective plan of action and provide notification to the area authority's board of directors of the plan. The Department shall also keep the county board of commissioners and the area authority's board of directors informed of any ongoing concerns or problems with the area authority's finances or delivery of services. (1995, c. 507, s. 23.2; 1995 (Reg. Sess., 1996), c. 749, s. 6; 1997-443, s. 11A.118(a).)

Editor's Note. —
Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. —
The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 122C-125. Area Authority financial failure; State assumption of financial control.

At any time that the Secretary of the Department of Health and Human Services determines that an area authority is in imminent danger of failing financially and of failing to provide direct services to clients, the Secretary, after providing written notification of the Secretary's intent to the area board and after providing the area authority an opportunity to be heard, may assume control of the financial affairs of the area authority and appoint an administrator to exercise the powers assumed. This assumption of control shall have the effect of divesting the area authority of its powers as to the adoption of budgets, expenditures of money, and all other financial powers conferred in the area authority by law. County funding of the area authority shall continue when the State has assumed control of the financial affairs of the area authority. At no time after the State has assumed this control shall a county withdraw funds previously obligated or appropriated to the area authority. The Secretary shall adopt rules to define imminent danger of failing financially and of failing to provide direct services to clients.

Upon assumption of financial control, the Department shall, in conjunction with the area authority, develop and implement a corrective plan of action and provide notification to the area authority's board of directors of the plan. The Department shall also keep the county board of commissioners and the area authority's board of directors informed of any ongoing concerns or problems with the area authority's finances. (1995, c. 507, s. 23.2; 1995 (Reg. Sess., 1996), c. 749, s. 7; 1997-443, s. 11A.118(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. —

The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 122C-132.1. Single portal of entry and exit designation for public and private services for individuals with developmental disabilities.

Editor's Note. —

The reference in subsection (a) to "Part A of Article 6 of Chapter 131E" was changed to "Part 1 of Article 6 of Chapter 131E" pursuant to S.L. 1997-456, s. 27, which authorized the Revisor of Statutes to renumber or reletter sections or parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Part 4. Area Facilities.

§ 122C-147. Financing and title of area authority property.

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'".

Session Laws 1997-443, s. 11.35, provides for the funding of treatment and education programs for children under the age of 18 who suffer from emotional, mental, or neurological handicaps accompanied by violent or assaultive behavior, identified as a Class in the case of Willie M., et al v. Hunt, et al., and defined in G.S. 122C-3(13a) as Eligible Assaultive and Violent Children; s. 11.35(b) provides that funds appropriated by the General Assembly to the Department of Human Resources for serving members of the Willie M. Class shall be expended only for programs serving members of that Class identified in Willie M., et al v. Hunt, et al., or defined in G.S. 122C-3(13a) as Eligible Assaultive and Violent Children, including evaluations of potential Class members, and that the Department shall reallocate these funds among services to Class members during the year as it deems advisable; s. 11.35(d) provides for the Department to continue to implement its prospective unit cost reimbursement system, to ensure that unit cost rates reflect reasonable costs, and to reduce and/or cap rates to programs which are significantly higher than those rates paid to other programs for the same service; s. 11.35(d1) provides for review by the Department of cases whose annual cost is anticipated to be in excess of 150% of the average annual per client expenditure of the previous fiscal year; s. 11.35(e1) provides for the Department to document and assess individual Class members' progress through the continuum of services; and s. 11.35(i) provides that if the Department determines a local program is not providing appropriate services, the Department may ensure the provision of these services through contracts with public or private agencies or by direct operation of the programs.

Session Laws 1997-443, s. 11.35(e), provides that the Department of Human Resources and the Department of Public Education shall submit, by May 1 of each fiscal year, a joint report to the Governor and the General Assembly on the progress achieved in serving members of the Willie M. Class; and s. 11.35(f) provides that those departments shall provide periodic reports of expenditures and program effectiveness on behalf of the Willie M. Class to the Fiscal Research Division, which shall include explanations of measures they have taken to control and reduce program expenditures.

Session Laws 1997-443, s. 11.35(h), provides that the use of unexpended Willie M. funds from prior fiscal years to cover current or future needs of the Willie M. program is not precluded by the limitation that no funds be expended on placement and services for Willie M. Class members except funds specifically appropriated by the General Assembly for members, or funds for placement or services for which members are otherwise eligible; and that these expenditures shall not be subject to the requirements of G.S. 143-18.

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

§ 122C-152. Liability insurance and waiver of immunity as to torts of agents, employees, and board members.

CASE NOTES

Sovereign Immunity Waived. — Where sovereign immunity is waived by the purchase of liability insurance, subject matter jurisdiction is statutorily vested in the superior court. Meyer v. Walls, 122 N.C. App. 507, 471 S.E.2d 422 (1996).

County's participation in risk management program operated as a total waiver of governmental immunity in regard to a claim concerning the death of a mentally disabled adult who was killed after exiting a county van. Cross v. Residential Support Servs., Inc., 123 N.C. App. 616, 473 S.E.2d 676 (1996).

Part 7. Contested Case Hearings for Eligible Assaultive and Violent Children.

§ 122C-197. Mediation.

(a) Prior to the filing of a petition for contested case review, mediation of disputes is voluntary but encouraged.

(b) When such a request for mediation has been made by the parent, guardian, or advocate, the director of the area authority or the director of the designated lead agency shall meet, or designate an assistant or associate to meet, with the parent, guardian, or advocate, the local interagency committee, and the regional consultant/service manager for the Department of Public Instruction and the Department of Health and Human Services to mediate the dispute.

(c) The meeting shall be informal and nonadversarial, as required by G.S. 150B-22.

(d) Mediation of the disagreement shall occur within 10 working days of the initiation of the mediation process by the parent, guardian, or advocate. If successful mediation does not occur within 10 working days, the parent, guardian, or advocate may file a written petition with the Office of Administrative Hearings for a contested case hearing in accordance with G.S. 150B-23. (1995, c. 249, s. 3; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 122C-199. Administrative review by Review Officer.

(a) When there is an appeal by either party of the decision of the administrative law judge, an impartial Review Officer for the review will be appointed by the Secretary of the Department of Health and Human Services.

(b) The Review Officer shall be selected from a pool of review officers who have been approved, meet qualifications, and perform a review pursuant to rules adopted by the Secretary for this purpose.

(c) If the Review Officer decides to hold a hearing to receive additional evidence, all rights prescribed by Chapter 150B of the General Statutes to an administrative hearing apply.

(d) The decision of the Review Officer shall contain findings of fact and conclusions of law and becomes final unless an aggrieved party brings a civil action pursuant to Article 4 of Chapter 150B of the General Statutes. A copy of the decision shall be served upon each party, and a copy shall be furnished to the attorneys of record. The written notice shall contain a statement informing the parties of the right to file a civil action and the 30-day limitations period for filing a civil action pursuant to Article 4 of Chapter 150B of the General Statutes.

(e) Any party aggrieved by the decision of the Review Officer may file a petition for judicial review under Chapter 150B of the General Statutes in State court within 30 days after receipt of notice of the decision. (1995, c. 249, s. 3; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

ARTICLE 5.

Procedures for Admission and Discharge of Clients.

Part 7. Involuntary Commitment of the Mentally Ill; Facilities for the Mentally Ill.

§ 122C-261. Affidavit and petition before clerk or magistrate when immediate hospitalization is not necessary; custody order.

(a) Anyone who has knowledge of an individual who is mentally ill and either (i) dangerous to self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b., or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, may appear before a clerk or assistant or deputy clerk of superior court or a magistrate and execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a physician or eligible psychologist. The affidavit shall include the facts on which the affiant's opinion is based. If the affiant has knowledge or reasonably believes that the respondent, in addition to being mentally ill, is also mentally retarded, this fact shall be stated in the affidavit. Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found.

(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent is probably mentally ill and either (i) dangerous to self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b., or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, the clerk or magistrate shall issue an order to a law enforcement officer or any other person authorized under G.S. 122C-251 to take the respondent into custody for examination by a physician or eligible psychologist. If the clerk or magistrate finds that, in addition to probably being mentally ill, the respondent is also probably mentally retarded, the clerk or magistrate shall contact the area authority before issuing a custody order and the area authority shall designate the facility to which the respondent is to be taken for examination by a physician or eligible psychologist. The clerk or magistrate shall provide the petitioner and the respondent, if present, with specific information regarding the next steps that will occur for the respondent.

(c) If the clerk or magistrate issues a custody order, the clerk or magistrate shall also make inquiry in any reliable way as to whether the respondent is indigent within the meaning of G.S. 7A-450. A magistrate shall report the result of this inquiry to the clerk.

(d) If the affiant is a physician or eligible psychologist, the affiant may execute the affidavit before any official authorized to administer oaths. This affiant is not required to appear before the clerk or magistrate for this purpose. This affiant's examination shall comply with the requirements of the initial examination as provided in G.S. 122C-263(c). If the physician or eligible psychologist recommends outpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for outpatient commitment, the clerk or magistrate shall issue an order that a hearing before a district court judge be held to determine whether the respondent will be involuntarily committed. The physician or eligible psychologist shall provide the respondent with written notice of any scheduled appointment and the name, address, and telephone number of the proposed outpatient treatment physician or center. If the physician or eligible psychologist recommends inpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, the clerk or magistrate shall issue an order for transportation to or custody at a 24-hour facility described in G.S. 122C-252. However, if the clerk or magistrate finds probable cause to believe that the respondent, in addition to being mentally ill, is also mentally retarded, the clerk or magistrate shall contact the area authority before issuing the order and the area authority shall designate the facility to which the respondent is to be transported. If a physician or eligible psychologist executes an affidavit for inpatient commitment of a respondent, a second physician shall be required to perform the examination required by G.S. 122C-266.

(e) Upon receipt of the custody order of the clerk or magistrate or a custody order issued by the court pursuant to G.S. 15A-1003, a law enforcement officer or other person designated in the order shall take the respondent into custody within 24 hours after the order is signed, and proceed according to G.S. 122C-263.

(f) When a petition is filed for an individual who is a resident of a single portal area, the procedures for examination by a physician or eligible psychologist as set forth in G.S. 122C-263 shall be carried out in accordance with the area plan. Prior to issuance of a custody order for a respondent who resides in an area authority with a single portal plan, the clerk or magistrate shall communicate with the area authority to determine the appropriate 24-hour facility to which the respondent should be admitted according to the area plan or to determine if there are more appropriate resources available through the area authority to assist the petitioner or the respondent. When an individual from a single portal area is presented for commitment at a 24-hour area or State facility directly, the individual may not be accepted for admission until the facility notifies the area authority and the area authority agrees to the admission. If the area authority does not agree to the admission, it shall determine the appropriate 24-hour facility to which the individual should be admitted according to the area plan or determine if there are more appropriate resources available through the area authority to assist the individual. If the area authority agrees to the admission, further planning of treatment for the client is the joint responsibility of the area authority and the facility as prescribed in the area plan.

Notwithstanding the provisions of this section, in no event shall an individual known or reasonably believed to be mentally retarded be admitted to a State psychiatric hospital, except as follows:

(1) Persons described in G.S. 122C-266(b);
(2) Persons admitted pursuant to G.S. 15A-1321;
(3) Respondents who are so extremely dangerous as to pose a serious threat to the community and to other patients committed to non-State hospital psychiatric inpatient units, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee; and
(4) Respondents who are so gravely disabled by both multiple disorders and medical fragility or multiple disorders and deafness that alternative care is inappropriate, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee.

Individuals transported to a State facility for the mentally ill who are not admitted by the facility may be transported by law enforcement officers or designated staff of the State facility in State-owned vehicles to an appropriate 24-hour facility that provides psychiatric inpatient care.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer has been completed. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 3; 1979, c. 164, s. 2; c. 915, ss. 3, 18; 1983, c. 383, s. 5; c. 638, ss. 3-5; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 4; 1985 (Reg. Sess., 1986), c. 863, s. 17; 1989 (Reg. Sess., 1990), c. 823, ss. 1, 2; c. 1024, s. 27.1; 1991, c. 37, s. 7; 1995 (Reg. Sess., 1996), c. 739, s. 6; 1997-456, s. 47.)

Effect of Amendments. — The 1997 amendment, effective August 29, 1997, substituted "The physician or eligible psychologist" for "If a physician or eligible psychologist recommends outpatient commitment, the clerk or magistrate" at the beginning of the fifth sentence in subsection (d).

§ 122C-263. Duties of law-enforcement officer; first examination by physician or eligible psychologist.

(a) Without unnecessary delay after assuming custody, the law enforcement officer or the individual designated by the clerk or magistrate under G.S. 122C-251(g) to provide transportation shall take the respondent to an area facility for examination by a physician or eligible psychologist; if a physician or eligible psychologist is not available in the area facility, the person designated to provide transportation shall take the respondent to any physician or eligible psychologist locally available. If a physician or eligible psychologist is not immediately available, the respondent may be temporarily detained in an area facility, if one is available; if an area facility is not available, the respondent may be detained under appropriate supervision in the respondent's home, in a private hospital or a clinic, in a general hospital, or in a State facility for the mentally ill, but not in a jail or other penal facility.

(b) The examination set forth in subsection (a) of this section is not required if:

(1) The affiant who obtained the custody order is a physician or eligible psychologist who recommends inpatient commitment;

(2) The custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and he was found incapable of proceeding; or

(3) Repealed by Session Laws 1987, c. 596, s. 3.

In any of these cases, the law-enforcement officer shall take the respondent directly to a 24-hour facility described in G.S. 122C-252.

(c) The physician or eligible psychologist described in subsection (a) of this section shall examine the respondent as soon as possible, and in any event within 24 hours, after the respondent is presented for examination. The examination shall include but is not limited to an assessment of the respondent's:

(1) Current and previous mental illness and mental retardation including, if available, previous treatment history;

(2) Dangerousness to self, as defined in G.S. 122C-3(11)a. or others, as defined in G.S. 122C-3(11)b.;

(3) Ability to survive safely without inpatient commitment, including the availability of supervision from family, friends or others; and

(4) Capacity to make an informed decision concerning treatment.

(d) After the conclusion of the examination the physician or eligible psychologist shall make the following determinations:

(1) If the physician or eligible psychologist finds that:

a. The respondent is mentally ill;

b. The respondent is capable of surviving safely in the community with available supervision from family, friends, or others;

c. Based on the respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(11); and

d. The respondent's current mental status or the nature of the respondent's illness limits or negates the respondent's ability to make an informed decision to seek voluntarily or comply with recommended treatment.

The physician or eligible psychologist shall so show on the examination report and shall recommend outpatient commitment. In addition the examining physician or eligible psychologist shall show the name, address, and telephone number of the proposed outpatient treatment physician or center. The person designated in the order to provide transportation shall return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county, and the respondent shall be released from custody.

(2) If the physician or eligible psychologist finds that the respondent is mentally ill and is dangerous to self, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., the physician or eligible psychologist shall recommend inpatient commitment, and shall so show on the examination report. If, in addition to mental illness and dangerousness, the physician or eligible psychologist also finds that the respondent is known or reasonably believed to be mentally retarded, this finding shall be shown on the report. The law enforcement officer or other designated person shall take the respondent to a 24-hour facility described in G.S. 122C-252 pending a district court hearing. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for care at a private 24-hour facility, the law enforcement officer or other designated person shall take the respondent to a State facility for the mentally ill designated by the Commission in accordance with G.S. 143B-147(a)(1)a. for custody, observation, and treatment and immediately notify the clerk of superior court of this action.

In the event an individual known or reasonably believed to be mentally retarded is transported to a State facility for the mentally ill, in no event shall that individual be admitted to that facility except as follows:

a. Persons described in G.S. 122C-266(b);
b. Persons admitted pursuant to G.S. 15A-1321;
c. Respondents who are so extremely dangerous as to pose a serious threat to the community and to other patients committed to non-State hospital psychiatric inpatient units, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee; and
d. Respondents who are so gravely disabled by both multiple disorders and medical fragility or multiple disorders and deafness that alternative care is inappropriate, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee.

Individuals transported to a State facility for the mentally ill who are not admitted by the facility may be transported by law enforcement officers or designated staff of the State facility in State-owned vehicles to an appropriate 24-hour facility that provides psychiatric inpatient care.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer has been completed.

(3) If the physician or eligible psychologist finds that neither condition described in subdivisions (1) or (2) of this subsection exists, the proceedings shall be terminated. The person designated in the order to provide transportation shall return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county and the respondent shall be released from custody.

(e) The findings of the physician or eligible psychologist and the facts on which they are based shall be in writing in all cases. The physician or eligible psychologist shall send a copy of the findings to the clerk of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy within 48 hours of the time that it was signed, the physician or eligible psychologist shall also communicate his findings to the clerk by telephone.

(f) When outpatient commitment is recommended, the examining physician or eligible psychologist, if different from the proposed outpatient treatment physician or center, shall give the respondent a written notice listing the name, address, and telephone number of the proposed outpatient treatment physician or center and directing the respondent to appear at the address at a specified date and time. The examining physician or eligible psychologist before the appointment shall notify by telephone the designated outpatient treatment physician or center and shall send a copy of the notice and his examination report to the physician or center.

(g) The physician or eligible psychologist, at the completion of the examination, shall provide the respondent with specific information regarding the next steps that will occur. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 4; c. 679, s. 8; c. 739, s. 1; 1979, c. 358, s. 27; c. 915, s. 4; 1983, c. 380, ss. 4, 10; c. 638, ss. 6, 7, 25.1; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 5, 6; 1985 (Reg. Sess., 1986), c. 863, s. 18; 1987, c. 596, s. 3; 1989, c. 225, s. 2; c. 770, s. 74; 1989 (Reg. Sess., 1990), c. 823, ss. 3, 4; 1991, c. 37, s. 8; c. 636, s. 2(1); c. 761, s. 49; 1995 (Reg. Sess., 1996), c. 739, s. 8(a)-(d).)

Editor's Note. — This section has been set out above to correct printing errors in (d)(2)d. and in (d)(3).

ARTICLE 6.

Special Provisions.

Part 1. Camp Butner and Community of Butner.

§ 122C-403. Secretary's authority over Camp Butner reservation.

The Secretary shall administer the Camp Butner reservation. In performing this duty, the Secretary has the powers listed below. In exercising these powers the Secretary has the same authority and is subject to the same restrictions that the governing body of a city would have and would be subject to if the reservation was a city, unless this section provides to the contrary. The Secretary may:

(1) Regulate airports on the reservation in accordance with the powers granted in Article 4 of Chapter 63 of the General Statutes.

(2) Take actions in accordance with the general police power granted in Article 8 of Chapter 160A of the General Statutes.

(3) Regulate the development of the reservation in accordance with the powers granted in Article 19, Parts 2, 3, 3A, 3B, 5,

6, and 7, of Chapter 160A of the General Statutes. The Secretary may not, however, grant a special use permit, a conditional use permit, or a special exception under Part 3 of that Article. In addition, the Secretary is not required to notify landowners of zoning classification actions under G.S. 160A-384, and the protest petition requirements in G.S. 160A-385, and 160A-386 do not apply. The Secretary may appoint the Butner Planning Council to act like a Board of Adjustment to make recommendations to the Secretary concerning implementation of plans for the development of the reservation. When acting as a Board of Adjustment, the Butner Planning Council shall be subject to subsections (b), (c), (d), (f), and (g) of G.S. 160A-388.

(4) Establish one or more planning agencies in accordance with the power granted in G.S. 160A-361 or designate the Butner Planning Council as the planning agency for the reservation.

(5) Regulate streets, traffic, and parking on the reservation in accordance with the powers granted in Article 15 of Chapter 160A of the General Statutes.

(6) Control erosion and sedimentation on the reservation in accordance with the powers granted in G.S. 160A-458 and Article 4 of Chapter 113A of the General Statutes.

(7) Contract with and undertake agreements with units of local government in accordance with the powers granted in G.S. 160A-413 and Article 20, Part 1, of Chapter 160A of the General Statutes.

(8) Regulate floodways on the reservation in accordance with the powers granted in G.S. 160A-458.1 and Article 21, Part 6, of Chapter 143 of the General Statutes.

(9) Assign duties given by the statutes listed in the preceding subdivisions to a local official to the Butner Town Manager who shall be hired upon the recommendation of the Butner Planning Council and shall be assigned to the Office of the Secretary of Health and Human Services. The Butner Planning Council shall submit the names of three candidates for the position of Butner Town Manager to the Secretary of Health and Human Services and the Secretary shall select one of the candidates. The candidates shall meet the qualifications set by the State Personnel Commission for the position. The Butner Town Manager shall serve at the pleasure of the Secretary. The Secretary shall, through the Butner Town Manager, provide all necessary administrative assistance to the council in carrying out its duties.

(10) Adopt rules to carry out the purposes of this Article. (1949, c. 71, s. 3; 1955, c. 887, s. 1; 1959, c. 1028, s. 4; 1963, c. 1166, s. 10; 1965, c. 933; 1973, c. 476, s. 133; 1985, c. 589, s. 2; 1987, c. 536, s. 2; 1995 (Reg. Sess., 1996), c. 667, s. 3; 1997-59, s. 5; 1997-443, s. 11A.118(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. —

Session Laws 1997-59, s. 5, effective May 16, 1997, substituted "to act like" for "as" preceding "a Board of Adjustment" in subdivision (3), and substituted "Planning" for "Advisory" throughout the section.

Session Laws 1997-443, s. 11A.118(a), effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 122C-405. Procedure applicable to rules.

Rules adopted by the Secretary under this Article shall be adopted in accordance with the procedures for adopting a city ordinance on the same subject, shall be subject to review in the manner provided for a city ordinance adopted on the same subject, and shall be enforceable in accordance with the procedures for enforcing a city ordinance on the same subject. Violation of a rule adopted under this Article is punishable as provided in G.S. 122C-406.

Rules adopted under this Article may apply to part or all of the Camp Butner reservation. If a public hearing is required before the adoption of a rule, the Butner Planning Council shall conduct the hearing. (1949, c. 71, s. 4; 1963, c. 1166, s. 10; 1973, c. 476, s. 133; 1981, c. 614, s. 6; 1985, c. 589, s. 2; 1987, c. 536, s. 4; c. 720, s. 3; 1995 (Reg. Sess., 1996), c. 667, s. 5; 1997-59, s. 6.)

Effect of Amendments. — The 1997 amendment, effective May 16, 1997, substituted "Planning" for "Advisory" following "rule, the Butner" in the second paragraph.

Part 1A. Butner Planning Council.

§ 122C-412. Butner Planning Council; created.

(a) There is created a Butner Planning Council to consist of seven members, to be appointed in accordance with this section.

(b) through (f) Repealed by Session Laws 1997, c. 59, s. 2, effective May 16, 1997.

(g) The Butner Planning Council shall consist of seven members, three appointed by the Secretary and four appointed by the Board of Commissioners of Granville County. All members shall reside within the Camp Butner reservation.

(h) The initial appointments shall be made within 30 days of the effective date of this section. Of the initial members, one appointment by the Secretary and one appointment of the Board of Commissioners of Granville County shall be for one-year terms, one appointment by the Secretary and one appointment of the Board of Commissioners of Granville County shall be for two-year terms, and one appointment by the Secretary and two appointments of the Board of Commissioners of Granville County shall be for three-year terms. Thereafter, all terms shall be for three years.

(i) The Butner Planning Council shall hold an annual public meeting for receiving public nominations to be forwarded to the Secretary and the Board of County Commissioners of Granville County for their consideration for appointment to the Council.

(j) Members of the Butner Planning Council may be removed for cause by the appointing authority.

(k) Members of the Butner Planning Council shall receive reimbursement for travel, per diem, and subsistence in accordance with G.S. 138-5. Expenses of the Butner Planning Council shall be paid by the Department. The Secretary of Health and Human Services shall ensure that the Butner Planning Council has adequate resources and support to accomplish its duties.

(*l*) The Butner Planning Council shall elect a chairman and a vice-chairman from its membership for one-year terms. The Council shall elect a clerk for a one-year term.

(m) The initial meeting of the Butner Planning Council shall be called by the Secretary. The Council shall establish a regular meeting schedule that provides for at least quarterly meetings. Special meetings may be called by the Secretary, the chairman, or upon the written request of two members.

(n) The Butner Planning Council shall adopt rules for its procedures. (1995 (Reg. Sess., 1996), c. 667, s. 2; 1997-59, s. 2; 1997-443, s. 11A.118(b).)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 667 s. 1 provides: "The General Assembly finds that the Camp Butner Reservation and the Community of Butner, as regulated by Article 6 of Chapter 122C of the General Statutes, is a unique State resource that is and should continue to be administered by the State of North Carolina through the Office of the Secretary of Human Resources. The General Assembly finds that there is a resident population in the Community of Butner that, because of the unique relationship between the State of North Carolina and cities and counties, as provided in G.S. 122C-410, does not have elected representation with respect to public services, such as police and fire protection, and the provision of water and sewers, that would normally be under the control of an elected city council or board of county commissioners. The General Assembly finds that the citizens of the Camp Butner Reservation should be permitted to elect a representative body to act as the voice of the affected people of Butner in dealing with the State of North Carolina through the Department of Human Resources with regard to the provision of public services and planning for the future of the Camp Butner Reservation."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-59, s. 2, effective May 16, 1997, substituted "Planning" for "Advisory" in the part head; substituted "Planning" for "Advisory" in the section catchline; substituted "Planning Council to consist of seven members, to be appointed in accordance with this section" for "Advisory Council to consist of seven members, to be elected by the residents of the territorial jurisdiction established by G.S. 122C-408(a), at a nonpartisan election administered by the Granville County Board of Elections at the general election on November 5, 1996" following "created a Butner" in subsection (a); deleted subsections (b) through (f); and added subsections (g) through (n).

Session Laws 1997-443, s. 11A.118(a), effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 122C-412.1. Butner Planning Council; powers.

(a) The Butner Planning Council may advise the Secretary of Health and Human Services, through resolutions adopted by the council, on the operations of the Camp Butner Reservation and the concerns of the residents of the Camp Butner Reservation in connection with the exercise of the powers granted to the Secretary pursuant to G.S. 122C-403.

(b) When the council adopts a resolution relating to one of the specific powers referenced in G.S. 122C-403 and delivers the resolution to the Office of the Secretary of Health and Human Services, the Secretary may approve the resolution, and it shall be carried out by the Butner Town Manager. The Secretary shall have no more than 30 days during which to disapprove any recommendation of the council contained in the resolution. Any disapproval shall be in writing, stating the reasons for the disapproval, and shall be returned to the council. If the Secretary does not disapprove a recommendation of the council within the prescribed period, the recommendation shall be deemed approved by the Secretary and shall be carried out by the Butner Town Manager. (1995 (Reg. Sess., 1996), c. 667, s. 2; 1997-59, s. 3; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-59, s. 3, effective May 16, 1997, substituted "Planning" for "Advisory" in the section catchline, and substituted "Planning" for "Advisory" near the beginning of subsection (a).

Session Laws 1997-443, s. 11A.118(a), effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 122C-412.2. Butner Planning Council; planning responsibility.

The Butner Planning Council shall, in consultation with the Department of Health and Human Services, the Community Assistance Division of the Department of Commerce, the Institute of Government, and other State and local agencies, prepare a long-range plan for the future development of the Camp Butner Reservation. This plan shall provide a blueprint for the development of the Reservation and the adjoining areas of Granville, Durham, and Person Counties and shall consider issues such as:

(1) The possible incorporation of a municipality on the Camp Butner Reservation;
(2) The provision of housing, public safety services, water and sewer services, school facilities, and park and recreational services for the increasing Butner population;
(3) The possible transfer of State-owned property for the future development in and around Butner;
(4) The growth and development of business and industrial areas within the Camp Butner Reservation, including planning and zoning issues; and
(5) How to maximize the utility of the Camp Butner Reservation to the State of North Carolina as a site for future State facilities and still meet the needs and improve the quality of life for the residents of Butner.

Copies of the long-range plan shall be submitted to the Secretary of Health and Human Services, the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division of the General Assembly, and to each member of the General Assembly representing the area no later than December 31, 1998. The Department of Health and Human Services, through the Butner Town Manager, shall provide necessary financial and personnel support for the preparation of this plan. (1995 (Reg. Sess., 1996), c. 667, s. 2; 1997-59, s. 4; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-59, s. 4, effective May 16, 1997, substituted "Planning" for "Advisory" in the section catchline, and substituted "Planning" for "Advisory" near the beginning of the introductory language.

Session Laws 1997-443, s. 11A.118(a), effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

Part 2. Black Mountain Joint Security Force.

§ 122C-421. Joint security force.

(a) The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Black Mountain Center, the Alcohol Rehabilitation Center, and the Juvenile Evaluation Center, all in Buncombe County. After taking the oath of office for law enforcement officers as set out in G.S. 11-11, these special police officers have the same powers as peace officers now vested in sheriffs within the territory embraced by the named centers. These special police officers shall also have the power prescribed by G.S. 7A-571(a) (4) outside the territory embraced by the named centers but within the confines of Buncombe County. These special police officers may arrest persons outside the territory of the named centers but within the confines of Buncombe County when the person arrested has committed a criminal offense within that territory, for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory.

(b) These special police officers may exercise any and all of the powers enumerated in this Part upon or in pursuit from the property formerly occupied by the Black Mountain Center and transferred to the Department of Correction by Senate Bill 388 and House Bill 709 of the 1985 Session of the General Assembly. These special police officers shall exercise said powers upon the property transferred to the Department of Correction only by agreement of the Departments of Correction and Health and Human Services. (1983 (Reg. Sess., 1984), c. 1116, s. 30; 1985, c. 408, ss. 3, 5; c. 589, s. 2; 1995, c. 391, s. 3; 1997-320, s. 2; 1997-443, s. 11A.118(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-320, s. 2, effective July 23, 1997, inserted "After taking the oath of office for law enforcement officers as set out in G.S. 11-11" in subsection (a).

Session Laws 1997-443, s. 11A.118(a), effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

Part 2A. Broughton Hospital Joint Security Force.

§ 122C-430. Joint security force.

The secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the department by any other law on the territory of the Broughton Hospital, North Carolina School For The Deaf, Western Regional Vocational Rehabilitation Facility, Western Carolina Center, and the surrounding grounds and land adjacent to Broughton Hospital allocated to the Department of Agriculture and Consumer Services, All in Burke County. after taking the oath of office for law enforcement officers as set out in G.S. 11-11, these special police officers have the same powers as peace officers now vested in sheriffs within the territory embraced by the named facilities. These special police officers may arrest persons outside the territory of the named institutions but within the confines of Burke County when the person arrested has committed a criminal offense within that territory for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory. (1997-320, s. 1.)

Editor's Note. — Session Laws 1997-320, s. 3, made this Part effective July 23, 1997.

Chapter 122D.

North Carolina Agricultural Finance Act.

Sec.
122D-3. Definitions.
122D-4. North Carolina Agricultural Finance Authority.
122D-6. General powers of Authority.
122D-14. Exemption from taxes.
122D-16. Trust funds.

§ 122D-1. Short title.

Editor's Note. —

Session Laws 1993, c. 561, s. 97 amended Session Laws 1985, c. 1011, s. 3 to read: "Funds appropriated to the Department of Agriculture, Reserve for Farm Loans shall be used for the purposes set out in this act, other than the administration of Chapter 122D of the General Statutes. Interest on these funds and interest received from loans of these funds may be used for any of the purposes set out in this act, including the administration of Chapter 122D of the General Statutes."

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 122D-3. Definitions.

As used in this Chapter, the following terms, unless the context clearly indicates a different meaning, shall have the following meanings:

(1) "Agricultural Loan" means a loan made by a lending institution or by the Authority to any person for the purpose of financing or refinancing land acquisition or improvement; soil conservation; irrigation; construction, renovation or expansion of buildings and facilities; purchase of farm fixtures, livestock, poultry, and fish of any kind; seeds; fertilizers; pesticides; feeds; machinery; equipment; containers or supplies or any other products employed in the production, cultivation, harvesting, storage, marketing, distribution or export of agricultural products.

(2) "Agriculture" means the commercial production, storage, processing, marketing, distribution or export of any agronomic, floricultural, horticultural, viticultural, silvicultural or aquacultural crop including, but not limited to, farm products, livestock and livestock products, poultry and poultry products, milk and dairy products, fruit and other horticultural products, and seafood and aquacultural products.

(3) "Authority" means the North Carolina Agricultural Finance Authority created by this Chapter.

(4) "Bonds" or "notes" means the bonds, notes, renewal notes, refunding bonds, interim certificates, certificates of indebtedness, debentures, warrants, commercial paper, or other obligations or evidences of indebtedness authorized to be issued by the Authority pursuant to the provisions of this Chapter.

(5) "Commissioner" means the North Carolina Commissioner of Agriculture.

(6) "Department" means the North Carolina Department of Agriculture and Consumer Services.

(7) "Federal government" means the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America.

(8) "Lending institution" means any bank, bank or trust company, federal land bank, production credit association, bank for cooperatives, building and loan association, homestead, insurance company, investment banker, mortgage banker or company, pension or retirement fund, savings bank or savings and loan association, small business investment company, credit union, the federal government or any other financial institution authorized to do business in North Carolina or operating under the supervision of any federal agency or any corporation organized or operating pursuant to Section 25 of the Federal Reserve Act.

(9) "Persons" means any individual, partnership, firm, corporation, company, cooperative, association, society, trust or any other business unit or entity, including any state or federal agency.

(10) "State" means the State of North Carolina or any agency or instrumentality thereof. (1983, c. 789, s. 1; 1985 (Reg. Sess., 1986), c. 1011, s. 1; 1987, c. 112, s. 3; 1989 (Reg. Sess., 1990), c. 1074, s. 32(b); 1997-261, s. 85.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" at the end of subdivision (6).

§ 122D-4. North Carolina Agricultural Finance Authority.

(a) The North Carolina Agricultural Finance Authority, a body politic and corporate, is hereby created within the Department of Agriculture and Consumer Services. The Authority shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions.

(b) The Authority shall be composed of 10 members. The Commissioner shall serve ex officio, with the same rights and privileges, including voting rights, as other members. The other nine members shall be appointed in the following manner:

(1) Three members appointed by the General Assembly upon the recommendation of the Speaker of the House under G.S. 120-121;

(2) Three members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121; and

(3) Three members appointed by the Governor.

(c) Members shall serve for three-year terms. Initial terms shall commence July 1, 1986. Appointed members shall serve until their successors are appointed and qualify.

(d) Vacancies in the offices of any appointed members of the Authority shall be filled in accordance with G.S. 120-122 for the remainder of the unexpired term. No vacant office shall be included in the determination of a quorum. No vacancy in office shall impair the rights of the members to exercise all rights and to conduct official business of the Authority.

(e) The domicile of the Authority shall be the City of Raleigh.

(f) A majority of the members shall constitute a quorum for the transaction of official business. All official actions of the Authority shall require an affirmative vote of a majority of the members present and voting at any meeting.

(g) Members of the Authority shall not receive any salary for the performance of their duties as members. Appointed members may be reimbursed for such actual expenses as may be incurred for travel and subsistence in the performance of official duties and such per diem as is allowed by law for members of other State boards, commissions and committees.

(h) The Authority shall meet quarterly and may meet more frequently upon call.

(i) The Authority may delegate to one or more of its members, officers, employees or agents such powers and duties as it may deem proper. (1983, c. 789, s. 1; 1985, c. 583, s. 2; 1985 (Reg. Sess., 1986), c. 1011, s. 1; 1989 (Reg. Sess., 1990), c. 1074, s. 32(b); 1995, c. 490, s. 4; 1997-261, s. 109.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture " in subsection (a).

§ 122D-6. General powers of Authority.

The Authority shall have all the powers necessary to give effect to and carry out the purposes and provisions of this Chapter, including the following powers in addition to all other powers granted by other provisions of this Chapter, to:

(1) Sue and be sued in its own name and in the name of any subsidiary corporation or entity which may be created pursuant to paragraph (19) of this section;

(2) Have a seal and alter the same at its pleasure;

(3) Adopt bylaws for the internal organization and government of the Authority;

(4) Adopt, promulgate and amend rules for the administration of the Chapter;

(4a) Limit the definition of agricultural loan under G.S. 122D-3(1);

(5) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this Chapter with any federal or State governmental agency, public or private corporation, lending institution or other entity or person, and each and any North Carolina governmental agency is hereby authorized to enter into contracts and otherwise cooperate with the agency to facilitate the purposes of this Chapter;

(6) Accept, administer and expend donations of movable or immovable property from any source, and receive, administer and expend appropriations from the legislature and financial assistance, guarantees, insurance or subsidies from the federal or State government;

(7) Subject to the rights of holders of bonds of the Authority, to renegotiate, refinance or foreclose on any mortgage, security interest or lien; or commence any action to protect or enforce any right or benefit conferred upon the Authority by any law, mortgage, security interest, lien, contract or other agreement; and bid for and purchase property at any foreclosure or at any other sale or otherwise acquire or take possession of any property; and in any such event, the Authority may complete, administer, pay the principal of and interest on any obligation incurred in connection with such property, dispose of and otherwise deal with such property in such manner as may be necessary or desirable to protect the interest of the Authority or of holders of its bonds therein;

(8) Procure or provide for the procurement of insurance or reinsurance against any loss in connection with its property or operations, including but not limited to insurance, reinsurance or other guarantees from any federal or State governmental agency or private insurance company for the payment of any bonds issued by the Authority, or bond, notes or any other obligations or evidences of indebtedness issued or made by any subsidiary corporation or entity created pursuant to subdivision (19) of this section or by any lending institution or other entity or person, or insurance or reinsurance against loss with respect to agricultural loans, mortgages or mortgage loans, or any other type of loans, including the power to pay premiums on such insurance or reinsurance;

(9) Make, insure, coinsure, reinsure, or cause to be insured, coinsured or reinsured, agricultural loans, mortgage loans or mortgages, or any other type of loans and pay or receive premiums on such insurance, coinsurance or reinsurance, and establish reserves for losses, and participate in the insurance, coinsurance or reinsurance of agricultural loans, mortgage loans or mortgages, or any other type of loans with the federal or State government or any private insurance company;

(10) Undertake and carry out or authorize the completion of studies and analyses of agricultural conditions and needs within the State and needs relating to the promotion of agricultural exports and ways of meeting such needs, and make such studies and analyses available to the public and to the agricultural industry, and to engage in research or disseminate information on agriculture and agricultural exports;

(11) Accept federal, State or private financial or technical assistance and comply with any conditions for such assistance, provided such conditions are not in conflict with the intent of this Chapter;

(12) Establish, pay and collect fees and charge in connection with its loans, deposits, insurance commitments and services, including but not limited to, reimbursement of costs of issuing bonds, origination and servicing fees, and insurance premiums;

(13) Make loans to or deposits with lending institutions and purchase or sell agricultural loans;

(14) Acquire or contract to acquire from any person, firm, corporation, municipality, federal or State agency, by grant, purchase or otherwise, movable or immovable property or any interest therein; own, hold, clear, improve, lease, construct or rehabilitate, and sell, invest, assign, exchange, transfer, convey, lease, mortgage or otherwise dispose of or encumber the same, subject to the rights of holders of the bonds of the Authority, at public or private sale, with or without public bidding;

(15) Borrow money, issue bonds, and provide for the rights of the lenders or holders thereof and purchase, discount, sell, negotiate and guarantee, insure, coinsure and reinsure note, drafts, checks, bills of exchange, acceptances, bankers acceptances, cable transfers, letters of credit and other evidence of indebtedness with or without credit enhancement devices;

(16) Subject to the rights of holders of the bonds of the Authority, consent to any modification with respect to the rate of interest, time, payment of any installment of principal or interest, security or any other term or condition of any loan, contract, mortgage, mortgage loan or commitment therefor or agreement of any kind to which the Authority is a party or beneficiary;

(17) Maintain an office at such place or places as the Authority shall determine;

(18) Serve as the beneficiary of any public trust;

(19) After reporting to the agriculture committees of the House of Representatives and the Senate, to create such subsidiary corporations or entities as may be necessary to borrow money, insure or reinsure agricultural loans, or issue bonds in the international financial market; and

(20) Purchase or participate in the purchase and enter into commitments by itself or together with others for the purchase of federally issued securities; provided that the proceeds of such securities will be utilized in accordance with the provisions of this Chapter. (1983, c. 789, s. 1; 1985 (Reg. Sess., 1986), c. 1011, s. 1; 1987, c. 112, s. 4; 1989 (Reg. Sess., 1990), c. 1000, s. 1; c. 1074, s. 32(b); 1993, c. 553, ss. 37, 38.)

§ 122D-14. Exemption from taxes.

The exercise of the powers granted by this Chapter will be in all respects for the benefit of the people of the State, for their well-being and prosperity and for the improvement of their social and economic conditions, and the Authority shall not be required to pay any tax or assessment on any property owned by the Authority under the provisions of this Chapter or upon the income therefrom.

Any obligations issued by the Authority under the provisions of this Chapter shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes, income taxes on the gain from the transfer of the obligations, and franchise taxes. The interest on the obligations is not subject to taxation as income. (1985 (Reg. Sess., 1986), c. 1011, s. 1; 1989 (Reg. Sess., 1990), c. 1000, s. 1; 1995, c. 46, s. 11.)

§ 122D-16. Trust funds.

(a) Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Chapter shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. Interest earned from these moneys and interest received from loans made from these moneys may be used for any purpose set out in this Chapter and for the costs of administering this Chapter. The resolution authorizing any obligations or the trust agreement securing any obligations may provide that any of these moneys may be temporarily invested pending the disbursement of the moneys and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited, shall act as trustee of the moneys and shall hold and apply the moneys for the purposes under this Chapter, subject to any rules adopted pursuant to this Chapter and any provisions in the provision or trust agreement.

(b) All moneys of the Authority may be invested in the following:

(1) Bonds, notes or treasury bills of the United States;

(2) Non-convertible debt securities of the following issuers:
  a. The Federal Home Loan Bank Board;
  b. The Federal National Mortgage Association;
  c. The Federal Farm Credit Bank; and
  d. The Student Loan Marketing Association;

(3) Any other obligations not listed above which are guaranteed as to principal and interest by the United States or any of its agencies;

(4) Certificates of deposit and other evidences of deposit at state and federal chartered banks and savings and loan associations; provided that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof be fully collateralized;

(5) Obligations of the United States or its agencies under a repurchase agreement for a shorter time than the maturity date of the security itself if the market value of the security itself is more than the amount of funds invested;

(6) Money market funds whose portfolios consist of any of the foregoing investments;

(7) A guaranteed investment or similar contract, which provides for the investment of funds at a guaranteed rate of return, with an insurance company or depository financial institution with a claim paying rating of no less than either of the two highest grades given by a nationally recognized rating agency; and

(8) Any other investment authorized by law for the investment of funds by a unit of local government. (1983, c. 789, s. 1; 1985 (Reg. Sess., 1986), c. 1011, s. 1; 1987, c. 112, s. 1; 1989 (Reg. Sess., 1990), c. 1074, s. 32(b); 1997-443, s. 14.5.)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, added the subsection (a) and (b) designations; and rewrote subsection (a).

Chapter 122E.

North Carolina Housing Trust and Oil Overcharge Act.

Sec.
122E-4. North Carolina Housing Partnership created; compensation; organization.

Sec.
122E-8. Allocation of funds.

§ 122E-4. North Carolina Housing Partnership created; compensation; organization.

(a) The North Carolina Housing Partnership is hereby created within the North Carolina Housing Finance Agency to establish policy, promulgate rules and regulations, and oversee the operation of the Fund. The Partnership shall be constituted to coordinate private enterprise and investment with public efforts to address the serious shortage of decent, safe, and affordable housing for low and moderate income citizens of this State.

(b) The Partnership shall consist of 13 members as follows:

(1) The Executive Director of the North Carolina Housing Finance Agency shall serve ex officio;
(2) The Secretary of the Department of Commerce or his designee shall serve ex officio;
(3) The State Treasurer or his designee shall serve ex officio;
(4) In accordance with G.S. 120-121, five members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, provided that one member shall be a representative of the homebuilding industry, one member shall be a low income housing advocate, and one member shall be a representative of the League of Municipalities;
(5) In accordance with G.S. 120-121, five members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, provided that one member shall be a representative of the real estate lending industry; one member shall be a representative of a non-profit housing development corporation; and one member shall be a resident of low income housing.

The members of the Partnership shall elect one of their members to serve as Chairman for a term of one year. Seven members of the Partnership shall constitute a quorum. All members shall have the right to vote on all issues before the Partnership.

(c) Members of the Partnership shall serve for three year terms. Initial terms shall begin on September 1, 1987. Appointed members shall serve until their successors are appointed and qualify.

(d) Vacancies in the offices of any appointed members shall be filled in accordance with G.S. 120-122 for the remainder of the unexpired term. No vacant office shall be included in the determination of a quorum. No vacancy in office shall impair the rights of the members to exercise all rights and conduct the official business of the Partnership.

(e) Members of the Partnership shall receive as compensation for each day spent on work for the Partnership such actual expenses as may be incurred for such travel and subsistence in the performance of official duties and such per diem as is allowed by law for other such State boards and commissions. Members shall not receive a salary for the performance of their duties as members.

(f) The Partnership shall have the following powers and duties:

(1) To promulgate rules and regulations governing all policy matters relating to the implementation of all programs for uses of the Fund and the Partnership's oversight of the Agency's administration of the Fund.

(2) To promote the development of a coordinated State low income housing plan.

(3) To obtain necessary information from other State agencies concerning housing; and

(4) To allocate monies contained in the Fund.

(g) The Partnership may appoint an Executive Director. The Executive Director shall be empowered to employ such additional professional and clerical assistance as the Partnership may deem necessary to administer the provisions of this Chapter. All employees of the Partnership, other than the Executive Director, shall be compensated in accordance with the salary schedules adopted pursuant to the State Personnel Act. The Partnership and the Agency may enter into agreements for the use of Agency staff to assist the Partnership and the provision of administrative support for the Partnership by the Agency.

(h) The Partnership shall meet quarterly and can meet more regularly upon the call of the Chairman or upon written request of four members.

(i) Members of the Partnership may not receive any direct benefit from, or participate in, the programs of the Fund. Members of the Partnership may be employed by, or serve as a board member of, a nonprofit entity participating in a program of the Fund if the member discloses the employment or the membership in the minutes of the Partnership and does not vote on any matter pertaining to the entity's participation. This policy applies to:

(1) Individual members of the Partnership;

(2) Businesses, corporations, or partnerships owned in whole or in part by members of the Partnership; and

(3) The immediate family members of the members of the Partnership. (1987, c. 841, s. 1; 1989, c. 727, s. 223(c); c. 751, ss. 7(12), 9(c); c. 754, s. 53; 1991 (Reg. Sess., 1992), c. 959, s. 31; 1995, c. 490, s. 25.)

Editor's Note. — Session Laws 1989, c. 751, s. 16, effective July 1, 1989, repealed Session Laws 1989, c. 727, s. 218(84), which would have substituted "Environment, Health and Natural Resources" for "Natural Resources and Community Development" in this section.

Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

§ 122E-8. Allocation of funds.

(a) Monies within the Fund shall be allocated to eligible applicants under this Chapter by the Agency, in accordance with funding cycles established at least annually. The Partnership shall establish rules and regulations with full public input, including at least one public hearing for which adequate notice is provided in a timely manner. These rules and regulations shall establish general policies governing the eligibility of applicants, application procedures, project eligibility requirements, and the criteria and standards for awarding grants and loans. Such rules and regulations shall be adopted within 270 days from the effective date of this Chapter.

(b) The Agency shall promulgate rules and regulations governing the review of applications for assistance and the awarding of grants or loans under this Chapter in accordance with the rules and regulations adopted pursuant to subsection (a) above. The rules and regulations shall provide that if an application is rejected, the Agency shall detail in writing the reasons for the rejection.

(c) The Agency shall give priority to applications providing for:

(1) The improvement of existing housing stock which is affordable for low and very low income families;

(2) The construction of housing units for very low income families; and

(3) The leveraging of Fund monies by combination with other private or governmental loan grant or bond financing programs.

(d) The Agency shall also give priority to applications which include provisions such as:

(1) Interest rates and loan terms more favorable than those conventionally offered;

(2) Developer contributions to project costs;

(3) Local government contributions to project costs, including infrastructure improvements, contributions of publicly owned land for housing development, and the provision of funds for such services as child care and job training;

(4) Coordination with other housing and/or infrastructure investments in the community;

(5) Provision of housing to the disabled, single parent households, or rurally isolated households; or

(6) Provision of housing to persons whose current housing fails to meet basic standards of health and safety and who have little prospect of improving the condition of their housing except by residing in an eligible project receiving assistance under this Chapter. (1987, c. 841, s. 1; 1997-506, s. 44.)

Effect of Amendments. — The 1997 amendment, effective September 16, 1997, substituted “child care” for “day care” in subdivision (d)(3).

Chapter 123.

Impeachment.

Article 1.

The Court.

§ 123-5. Causes for impeachment.

CASE NOTES

District Attorneys Not to Be Impeached. — The statutory listing is exclusive and does not allow for impeachment of district attorneys. In re Spivey, 345 N.C. 404, 480 S.E.2d 693 (1997).

Chapter 124.

Internal Improvements.

Sec.
124-6. (Effective July 1, 1999) Appointment of proxies, director of railroad companies, etc.

§ 124-6. (Effective July 1, 1999) Appointment of proxies, director of railroad companies, etc.

(a) The Governor shall appoint on behalf of the State all such officers or agents as, by any act, incorporating a company for the purpose of internal improvement, are allowed to represent the stock or other interests which the State may have in such company; and such person or persons shall cast the vote to which the State may be entitled in all the meetings of the stockholders of such company under the direction of said Governor; and the said Governor may, if in his opinion the public interest so requires, remove or suspend such persons, officers, agents, proxies, or directors in his discretion.

(b) Notwithstanding subsection (a) of this section, for any railroad company organized as a corporation in which the State is the owner of all the voting stock and which has trackage in more than two counties, five of the members of the Board of Directors shall be appointed by the Governor, two of the members of the Board of Directors shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and two of the members of the Board of Directors shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. Of the Governor's five appointments, three shall be either an investment banker, a person with railroad management experience, a person on an economic development commission whose region contains track of the company, or an attorney with corporate experience. The remaining two shall be at-large members. The Speaker of the House of Representatives shall recommend two at-large members. The President Pro Tempore of the Senate shall recommend two at-large members. The Board of Directors shall consist of nine members. Of the initial members appointed by the Governor, three shall be appointed for terms of four years and two shall be appointed for terms of two years. Of the initial members recommended to the General Assembly by the Speaker of the House of Representatives, one shall be appointed for term of four years and one shall be appointed for a term of two years. Of the initial members recommended to the General Assembly by the Speaker of the House of Representatives, one shall be appointed for a term of four years and one shall be appointed for a term of two years. Of the initial members recommended to the General Assembly by the President Pro Tempore of the Senate, one shall be appointed for a term of four years and one shall be appointed for a term of two years. Thereafter all Board members shall serve four-year terms. The Board shall elect the chairman from among its membership. (1925, c. 157, s. 6; 1997-443, s. 32.30(k).)

For this section as in effect until July 1, 1999, see the main volume.

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 32.30(l), provides that any railroad company covered by subsection (b) of this section shall present to the Joint Legislative Transportation Oversight Committee, by November 20, 1998, a business plan for the railroad.

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective July 1, 1999, inserted "director of railroad companies" in the catchline; added the subsection (a) designation; and added subsection (b).

Chapter 125.

Libraries.

Article 1.

State Library Agency.

Sec.
125-11. Failure to return books.

Article 1A.

State Depository Library System.

Sec.
125-11.12. [Repealed.]

ARTICLE 1.

State Library Agency.

§ 125-11. Failure to return books.

Any person who shall fail to return any book, periodical, or other material withdrawn by him from the Library shall be guilty of a Class 3 misdemeanor if he shall fail to return the borrowed material within 30 days after receiving a notice from the State Librarian that the material is overdue. The provisions of this section shall not be in effect unless a copy of this section is attached to the overdue notice by the State Librarian. (1955, c. 505, s. 3; 1993, c. 539, s. 929; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 929, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 1A.

State Depository Library System.

§ 125-11.12: Repealed by Session Laws 1993, c. 447, s. 1, effective July 22, 1993.

Chapter 126.
State Personnel System.

Article 1.
State Personnel System Established.

Sec.

126-1. Purpose of Chapter; application to local employees.
126-3. Office of State Personnel established and responsibilities outlined; administration and supervision; appointment, compensation and tenure of Director.
126-4. Powers and duties of State Personnel Commission.
126-5. Employees subject to Chapter; exemptions.
126-6.2. Reports.

Article 2.
Salaries, Promotions, and Leave of State Employees.

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Article 5.
Political Activity of Employees.

Sec.

126-14.2. Political hirings limited.
126-14.3. Open and fair competition.
126-14.4. Remedies.

Article 8.
Employee Appeals of Grievances and Disciplinary Action.

126-34.1. Grounds for contested case under the State Personnel Act defined.

Article 14.
Protection for Reporting Improper Government Activities.

126-84. Statement of policy.
126-85. Protection from retaliation.

Article 15.
Communications With Members of the General Assembly.

126-90. Communications with members of the General Assembly.

ARTICLE 1.
State Personnel System Established.

§ 126-1. Purpose of Chapter; application to local employees.

It is the intent and purpose of this Chapter to establish for the government of the State a system of personnel administration under the Governor, based on accepted principles of personnel administration and applying the best methods as evolved in government and industry. It is also the intent of this Chapter that this system of personnel administration shall apply to local employees paid entirely or in part from federal funds, except to the extent that local governing boards are authorized by this Chapter to establish local rules, local pay plans, and local personnel systems. It is also the intent of this Chapter to make provisions for a decentralized system of personnel administration, where appropriate, and without additional cost to the State, with the State Personnel Commission as the policy and rule-making body. The Office of State Personnel shall make recommendations for policies and rules to the Commission based on research and study in the field of personnel management, develop and administer statewide standards and criteria for good personnel management, provide training and technical assistance to all agencies, departments, and institutions, provide oversight, which includes conducting audits to monitor compliance with established State Personnel Commission policies and rules, administer a system for implementing necessary corrective actions when the rule, standards, or criteria are not met, and serve as the central repository for State Personnel System data. The agency, department, and institution heads shall be responsible and accountable for execution of Commission policies and rules for their employees. (1965, c. 640, s. 2; 1997-349, s. 1.)

Editor's Note. — Session Laws 1997-520, s. 8, effective September 17, 1997, provides:

"(a) Beginning January 1, 1998, and quarterly thereafter, the head of each State agency, department, or institution employing State employees subject to the State Personnel Act shall report to the Office of State Personnel on the following:

"(1) The costs associated with the defense or settlement of administrative grievances and lawsuits filed by current or former State employees and applicants for State employment, including the costs of settlements, attorneys" fees, litigation expenses, damages, or awards incurred by the respective State agencies, departments, and institutions. The report shall include an explanation of the fiscal impact of these costs upon the operations of the State agency, department, or institution.

"(2) The modification of position descriptions resulting in changes in position qualifications to allow the use of educational, experience, or other equivalencies in the hiring or promotion of State employees where such equivalencies were not previously used in the position descriptions. The report shall include an explanation of the reasons for the changes in the position descriptions and the bases for the use of the equivalencies.

"(b) Beginning May 1, 1998, and annually thereafter, the State Personnel Commission shall report to the Joint Legislative Commission on Governmental Operations on the costs associated with the defense or settlement of lawsuits and on the use of position qualification equivalencies, as compiled in accordance with subsection (a) of this section.

"(c) Beginning May 1, 1998, and then annually thereafter, the State Personnel Commission, through the Office of State Personnel, shall report to the Joint Legislative Commission on Governmental Operations on outcomes with respect to State employee hirings, promotions, disciplinary actions, and compensation, based upon demographics.

"(d) By May 1, 1998, the State Personnel Commission shall report to the Joint Legislative Commission on Governmental Operations on its development of a systematized approach to State employee recruitment utilizing standards and measures of outcomes across agency lines.

"(e) By May 1, 1998, the State Personnel Commission shall conduct a study and make a report to the Joint Legislative Commission on Governmental Operations on the salary administration of positions exempt from the State Personnel Act as it relates to the placement of exempt positions in the salary range."

Effect of Amendments. — The 1997 amendment, effective January 1, 1998, added the third through fifth sentences.

CASE NOTES

Stated in Gray v. Laws, 915 F. Supp. 747 (E.D.N.C. 1994).

§ 126-2. State Personnel Commission.

CASE NOTES

Cited in Dunn v. North Carolina Dep't of Human Resources, 124 N.C. App. 158, 476 S.E.2d 383 (1996).

§ 126-3. Office of State Personnel established and responsibilities outlined; administration and supervision; appointment, compensation and tenure of Director.

(a) There is hereby established the Office of State Personnel (hereinafter referred to as "the Office") which shall be placed for organizational purposes within the Department of Administration. Notwithstanding the provisions of North Carolina State government reorganization as of January 1, 1975, and specifically notwithstanding the provisions of Chapter 864 of the 1971 North Carolina Session Laws [Chapter 143A], the Office of State Personnel shall exercise all of its statutory powers in this Chapter independent of control by the Secretary of Administration and shall be under the administration and supervision of a State Personnel Director (hereinafter referred to as "the Director") appointed by the Governor and subject to the supervision of the Commission for purposes of this Chapter. The salary of the Director shall be fixed by the General Assembly in the Current Operations Appropriations Act. The Director shall serve at the pleasure of the Governor.

(b) The Office shall be responsible for the following activities, and such other activities as specified in this Chapter:

(1) Providing policy and rule development for the Commission and implementing and administering all policies, rules, and procedures established by the Commission;

(2) Providing training in personnel management to agencies, departments, and institutions including train-the-trainer programs for those agencies, departments, and institutions who request such training and where sufficient staff and expertise exist to provide the training within their respective agencies, departments, and institutions;

(3) Providing technical assistance in the management of personnel programs and activities to agencies, departments, and institutions;

(4) Negotiating decentralization agreements with all agencies, departments, and institutions where it is cost-effective to include delegation of authority for certain classification and corresponding salary administration actions and other personnel programs to be specified in the agreements;

(5) Administering such centralized programs and providing services as approved by the Commission which have not been transferred to agencies, departments, and institutions or where this authority has been rescinded for noncompliance;

(6) Providing approval authority of personnel actions involving classification and compensation where such approval authority has not been transferred by the Commission to agencies, departments, and institutions or where such authority has been rescinded for noncompliance;

(7) Maintaining a computer database of all relevant and necessary information on employees and positions within agencies, departments, and institutions in the State's personnel system;

(8) Developing criteria and standards to measure the level of compliance or noncompliance with established Commission policies, rules, procedures, criteria, and standards in agen-

cies, departments, and institutions to which authority has been delegated for classification, salary administration and other decentralized programs, and determining through routine monitoring and periodic review process, that agencies, departments, and institutions are in compliance or noncompliance with established Commission policies, rules, procedures, criteria, and standards; and

(9) Implementing corrective actions in cases of noncompliance. (1965, c. 640, s. 2; 1975, c. 667, s. 5; 1983, c. 717, s. 40; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1997-349, s. 2.)

Effect of Amendments. — The 1997 amendment, effective January 1, 1998, inserted "and responsibilities outlined" in the catchline; added the subsection (a) designation; and added subsection (b).

§ 126-4. Powers and duties of State Personnel Commission.

Subject to the approval of the Governor, the State Personnel Commission shall establish policies and rules governing each of the following:

(1) Position classification plans which shall provide for the classification and reclassification of all positions subject to this Chapter according to the duties and responsibilities of the positions.

(2) Compensation plans which shall provide for minimum, maximum, and intermediate rates of pay for all employees subject to the provisions of this Chapter.

(3) For each class of positions, reasonable qualifications as to education, experience, specialized training, licenses, certifications, and other job-related requirements pertinent to the work to be performed.

(4) Recruitment programs designed to promote public employment, communicate current hiring activities within State government, and attract a sufficient flow of internal and external applicants; and determine the relative fitness of applicants for the respective positions.

(5) Hours and days of work, holidays, vacation, sick leave, and other matters pertaining to the conditions of employment. The legal public holidays established by the Commission as paid holidays for State employees shall include Martin Luther King, Jr.'s Birthday and Veterans Day. The Commission shall not provide for more than 11 paid holidays per year except that in those years in which Christmas Day falls on a Tuesday, Wednesday, or Thursday, the Commission shall not provide for more than 12 paid holidays.

(5a) In years in which New Year's Day falls on Saturday, the Commission may designate December 31 of the previous calendar year as the New Year's holiday, provided that the number of holidays for the previous calendar year does not exceed 12 and the number of holidays for the current year does not exceed 10. When New Year's Day falls on either Saturday or Sunday, the constituent institutions of The University of North Carolina that adopt alternative dates to recognize the legal public holidays set forth in subdivision (5) of this section and established by the Commission may designate, in accordance with the rules of the Commission and the requirements of this subdivision, December 31 of the previous calendar year as the New Year's holiday.

(6) The appointment, promotion, transfer, demotion and suspension of employees.

(7) Cooperation with the State Board of Education, the Department of Public Instruction, the University of North Carolina, and the Community Colleges of the State and other appropriate resources in developing programs in, including but not limited to, management and supervisory skills, performance evaluation, specialized employee skills, accident prevention, equal employment opportunity awareness, and customer service; and to maintain an accredited Certified Public Manager program.

(7a) The separation of employees.

(8) A program of meritorious service awards.

(9) The investigation of complaints and the issuing of such binding corrective orders or such other appropriate action concerning employment, promotion, demotion, transfer, discharge, reinstatement, and any other issue defined as a contested case issue by this Chapter in all cases as the Commission shall find justified.

(10) Programs of employee assistance, productivity incentives, equal opportunity, safety and health as required by Part 1 of Article 63 of Chapter 143 of the General Statutes, and such other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and modern system of personnel administration. This subdivision may not be construed to authorize the establishment of an incentive pay program.

(11) In cases where the Commission finds discrimination or orders reinstatement or back pay whether (i) heard by the Commission or (ii) appealed for limited review after settlement or (iii) resolved at the agency level, the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved.

(12) Repealed by Session Laws 1987, c. 320, s. 2.

(13) Repealed by Session Laws 1987, c. 320, s. 3.

(14) The implementation of G.S. 126-5(e).

(15) Recognition of State employees, public personnel management, and management excellence.

(16) The implementation of G.S. 126-7.

(17) An alternative dispute resolution procedure.

(18) Delegation of authority for approval of personnel actions through decentralization agreements with the heads of State agencies, departments, and institutions.

  a. Decentralization agreements with Executive Branch agencies shall require a person, designated in the agency, to be accountable to the State Personnel Director for the compliance of all personnel actions taken pursuant to the delegated authority of the agency. Such agreements shall specify the required rules and standards for agency personnel administration.

  b. The State Personnel Director shall have the authority to take appropriate corrective actions including adjusting employee salaries and changing employee classifications that are not in compliance with policy or standards and to suspend decentralization agreements for agency noncompliance with the required personnel administration standards.

The policies and rules of the Commission shall not limit the power of any elected or appointed department head, in the department head's discretion and upon the department head's determination that it is in the best interest of the Department, to transfer, demote, or separate a State employee who is not a career State employee as defined by this Chapter. (1965, c. 640, s. 2; 1971, c. 1244, s. 14; 1975, c. 667, ss. 6, 7; 1977, c. 288, s. 1; c. 866, ss. 1, 17, 20; 1985, c. 617, ss. 2, 3; c. 791, s. 50(b); 1985 (Reg. Sess., 1986), c. 1028, s. 6; 1987, c. 25, s. 2; c. 320, ss. 1-3; 1991, c. 65, s. 1; c. 354, s. 2; c. 750, s. 1; 1991 (Reg. Sess., 1992), c. 994, s. 2; 1993, c. 388, s. 2; c. 522, s. 10; 1995, c. 141, s. 4; 1997-349, s. 3.)

Effect of Amendments. — The 1997 amendment, effective January 1, 1998, added subdivision (18).

CASE NOTES

Legislative Intent. — The General Assembly only intended to give the Commission the jurisdiction to resolve, through the appeal and contested case hearing process, those issues which are specifically defined as contested case issues in Chapter 126. Dunn v. North Carolina Dep't of Human Resources, 124 N.C. App. 158, 476 S.E.2d 383 (1996).

Most Qualified Applicant. — This section did not confer petitioner with specific grounds for appeal on the issue of whether the most qualified applicant was chosen. Dunn v. North Carolina Dep't of Human Resources, 124 N.C. App. 158, 476 S.E.2d 383 (1996).

Attorney Fees. — Upon appeal of the Commission's decision not to award attorney's fees under subsection (11) of this section, § 126-41 constrains the Superior Court to reverse or modify the Commission's order only if it is deemed unreasonable or inadequate. Morgan v. North Carolina DOT, 124 N.C. App. 180, 476 S.E.2d 431 (1996).

Since the Commission had statutory authority to award attorney's fees only in cases involving discrimination, reinstatement or back pay, the Commission properly denied an award of attorney's fees to petitioners. Morgan v. North Carolina DOT, 124 N.C. App. 180, 476 S.E.2d 431 (1996).

Quoted in North Carolina Dep't of Cors. v. Harding, 120 N.C. App. 451, 462 S.E.2d 671 (1995).

Cited in North Carolina Dep't of Cors. v. Myers, 120 N.C. App. 437, 462 S.E.2d 824 (1995); Walker v. North Carolina Coastal Resources Comm'n, 124 N.C. App. 1, 476 S.E.2d 138 (1996).

§ 126-5. Employees subject to Chapter; exemptions.

(a) The provisions of this Chapter shall apply to:
- (1) All State employees not herein exempt, and
- (2) To all employees of the following local entities:
  - a. Area mental health, developmental disabilities, and substance abuse authorities.
  - b. Local social services departments.
  - c. Local public health departments.
  - d. Local emergency management agencies that receive federal grant-in-aid funds.

An employee of a consolidated county human services agency created pursuant to G.S. 153A-77(b) is not considered an employee of an entity listed in this subdivision.

(3) County employees not included under subdivision (2) of this subsection as the several boards of county commissioners may from time to time determine.

(b) As used in this section:

(1) "Exempt position" means an exempt managerial position or an exempt policymaking position.

(2) "Exempt managerial position" means a position delegated with significant managerial or programmatic responsibility that is essential to the successful operation of a State department, agency, or division, so that the application of G.S. 126-35 to an employee in the position would cause undue disruption to the operations of the agency, department, institution, or division.

(3) "Exempt policymaking position" means a position delegated with the authority to impose the final decision as to a settled course of action to be followed within a department, agency, or division, so that a loyalty to the Governor or other elected department head in their respective offices is reasonably necessary to implement the policies of their offices. The term shall not include personnel professionals.

(4) "Personnel professional" means any employee in a State department, agency, institution, or division whose primary job duties involve administrative personnel and human resources functions for that State department, agency, institution, or division.

(c) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), and 126-7, and except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) A State employee who is not a career State employee as defined by this Chapter.

(2) One confidential assistant and two confidential secretaries for each elected or appointed department head and one confidential secretary for each chief deputy or chief administrative assistant.

(3) Employees in exempt policymaking positions designated pursuant to G.S. 126-5(d).

(4) The chief deputy or chief administrative assistant to the head of each State department who is designated either by statute or by the department head to act for and perform all of the duties of such department head during his absence or incapacity.

(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) Constitutional officers of the State.

(2) Officers and employees of the Judicial Department.

(3) Officers and employees of the General Assembly.

(4) Members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis.

(5) Officials or employees whose salaries are fixed by the General Assembly, or by the Governor, or by the Governor

and Council of State, or by the Governor subject to the approval of the Council of State.

(6) Employees of the Office of the Governor that the Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.

(7) Employees of the Office of the Lieutenant Governor, that the Lieutenant Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.

(8) Instructional and research staff, physicians, and dentists of The University of North Carolina.

(9) Employees whose salaries are fixed under the authority vested in the Board of Governors of The University of North Carolina by the provisions of G.S. 116-11(4), 116-11(5), and 116-14.

(10) Repealed by Session Laws 1991, c. 84, s. 1.

(11) North Carolina School of Science and Mathematics' employees whose salaries are fixed in accordance with the provisions of G.S. 116-235(c)(1) and G.S. 116-235(c)(2).

(12) Employees of the North Carolina Low-Level Radioactive Waste Management Authority whose salaries are fixed pursuant to G.S. 104G-5(g)(1) and G.S. 104G-5(g)(2).

(13) Employees of the North Carolina Hazardous Waste Management Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1) and G.S. 130B-6(g)(2).

(14) Employees of the North Carolina State Ports Authority.

(15) Employees of the North Carolina Global TransPark Authority.

(16) The executive director and one associate director of the North Carolina Center for Nursing established under Article 9F of Chapter 90 of the General Statutes.

(c2) The provisions of this Chapter shall not apply to:

(1) Public school superintendents, principals, teachers, and other public school employees.

(2) Recodified as G.S. 126-5(c)(4) by Session Laws 1985 (Regular Session, 1986), c. 1014, s. 41.

(3) Employees of community colleges whose salaries are fixed in accordance with the provisions of G.S. 115D-5 and G.S. 115D-20, and employees of the Department of Community Colleges whose salaries are fixed by the State Board of Community Colleges in accordance with the provisions of G.S. 115D-3.

(c3) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(5) and the provisions of Article 6 of this Chapter, the provisions of this Chapter shall not apply to: Teaching and related educational classes of employees of the Department of Correction, the Department of Health and Human Services, and any other State department, agency or institution, whose salaries shall be set in the same manner as set for corresponding public school employees in accordance with Chapter 115C of the General Statutes.

(c4) Repealed by Session Laws 1993, c. 321, s. 145(b), effective January 1, 1994.

(c5) Notwithstanding any other provision of this Chapter, Article 14 of this Chapter shall apply to all State employees, public school employees, and community college employees.

(c6) Article 15 of this Chapter shall apply to all State employees, public school employees, and community college employees.

(c7) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), 126-7, 126-14.3, and except as to the provisions of G.S. 126-14.2, G.S. 126-34.1(a)(2), and Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to exempt managerial positions.

(d)(1) Exempt Positions in Cabinet Department. — The Governor may designate a total of 100 exempt policymaking positions throughout the following departments:

a. Department of Administration;
b. Department of Commerce;
c. Department of Correction;
d. Department of Crime Control and Public Safety;
e. Department of Cultural Resources;
f. Department of Health and Human Services;
g. Department of Environment and Natural Resources;
h. Department of Revenue; and
i. Department of Transportation.

The Governor may designate exempt managerial positions in a number up to one percent (1%) of the total number of full-time positions in each cabinet department listed above in this sub-subdivision, not to exceed 30 positions in each department.

(2) Exempt Positions in Council of State Departments and Offices. — The Secretary of State, the Auditor, the Treasurer, the Attorney General, the Commissioner of Agriculture, the Commissioner of Insurance, and the Labor Commissioner may designate exempt positions. The State Board of Education may designate exempt positions in the Department of Public Instruction. The number of exempt policymaking positions in each department headed by an elected department head listed above in this sub-subdivision shall be limited to 20 exempt policymaking positions or one percent (1%) of the total number of full-time positions in the department, whichever is greater. The number of exempt managerial positions shall be limited to 20 positions or one percent (1%) of the total number of full-time positions in the department, whichever is greater.

(2a) Designation of Additional Positions. — The Governor, elected department head, or State Board of Education may request that additional positions be designated as exempt. The request shall be made by sending a list of exempt positions that exceed the limit imposed by this subsection to the Speaker of the North Carolina House of Representatives and the President of the North Carolina Senate. A copy of the list also shall be sent to the State Personnel Director. The General Assembly may authorize all, or part of, the additional positions to be designated as exempt positions. If the General Assembly is in session when the list is submitted and does not act within 30 days after the list is submitted, the list shall be deemed approved by the General Assembly, and the positions shall be designated as exempt positions. If the General Assembly is not in session when the list is submitted, the 30-day period shall not begin to run until the next date that the General Assembly convenes or reconvenes, other than for a special session called for a specific purpose not involving the approval of the list of additional positions to be designated as exempt positions; the policymaking positions shall not be designated as exempt during the interim.

(3) Letter. — These positions shall be designated in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate by May 1 of the year in which the oath of office is administered to each Governor unless the provisions of subsection (d)(4) apply.

(4) Vacancies. — In the event of a vacancy in the Office of Governor or in the office of a member of the Council of State, the person who succeeds to or is appointed or elected to fill the unexpired term shall make such designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within 120 days after the oath of office is administered to that person. In the event of a vacancy in the Office of Governor, the State Board of Education shall make these designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within 120 days after the oath of office is administered to the Governor.

(5) Creation, Transfer, or Reorganization. — The Governor, elected department head, or State Board of Education may designate as exempt a policymaking position that is created or transferred to a different department, or is located in a department in which reorganization has occurred, after May 1 of the year in which the oath of office is administered to the Governor. The designation must be made in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate within 120 days after such position is created, transferred, or in which reorganization has occurred.

(6) Reversal. — Subsequent to the designation of a position as an exempt position as hereinabove provided, the status of the position may be reversed and made subject to the provisions of this Chapter by the Governor, by an elected department head, or by the State Board of Education in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate.

(7) Hearing Officers. — Except as otherwise specifically provided by this section, no employee, by whatever title, whose primary duties include the power to conduct hearings, take evidence, and enter a decision based on findings of fact and conclusions of law based on statutes and legal precedents shall be designated as exempt. This subdivision shall apply beginning July 1, 1985, and no list submitted after that date shall designate as exempt any employee described in this subdivision.

(e) An exempt employee may be transferred, demoted, or separated from his or her position by the department head authorized to designate the exempt position except:

(1) When an employee who has the minimum service requirements described in subsection (c)(1) above but less than 10 years of cumulative service in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall have priority to any position that becomes available for which the employee is qualified, according to rules and regulations regulating and defining priority as promulgated by the State Personnel Commission; or

(2) When an employee who has 10 years or more cumulative service, including the immediately preceding 12 months, in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall be reassigned to a subject position within the same department or agency, or if necessary within another agency, and within a 35 mile radius of the exempt position, at the same grade and salary, including all across-the-board increases since placement in the position designated as exempt, as his most recent subject position.

(f) A department head is authorized to use existing budgeted positions within his department in order to carry out the provisions of subsection (e) of this section. If it is necessary to meet the requirements of subsection (e) of this section, a department head may use salary reserve funds authorized for his department.

(g) No employee shall be placed in an exempt position without 10 working days prior written notification that such position is so designated. A person applying for a position that is designated as exempt must be notified in writing at the time he makes the application that the position is designated as exempt.

(h) In case of dispute as to whether an employee is subject to the provisions of this Chapter, the dispute shall be resolved as provided in Article 3 of Chapter 150B. (1965, c. 640, s. 2; 1967, c. 24, s. 20; cc. 1038, 1143; 1969, c. 982; 1971, c. 1025, s. 2; 1973, c. 476, s. 143; 1975, c. 667, ss. 8, 9; 1977, c. 866, ss. 2-5; 1979, 2nd Sess., c. 1137, s. 40; 1983, c. 717, s. 41; c. 867, s. 2; 1985, c. 589, s. 38; c. 617, s. 1; c. 757, s. 206(c); 1985 (Reg. Sess., 1986), c. 955, s. 43; c. 1014, ss. 41, 235; c. 1022, s. 9; 1987, c. 320, s. 4; c. 395, s. 1; c. 809, s. 1; c. 850, s. 19; 1987 (Reg. Sess., 1988), c. 1064, s. 3; 1989, c. 168, s. 9; c. 236, s. 3; c. 484; c. 727, s. 218(85); c. 751, s. 7(13); 1991, c. 65, s. 2; c. 84, ss. 1, 2; c. 354, s. 3; c. 749, s. 4; 1991 (Reg. Sess., 1992), c. 879, s. 5; c. 959, s. 85; 1993, c. 145, s. 1; c. 321, s. 145(b); c. 553, ss. 39, 40; 1993 (Reg. Sess., 1994), c. 777, s. 4(g); 1995, c. 141, ss. 3, 5; c. 393, s. 1; 1995 (Reg. Sess., 1996), c. 690, s. 15; 1997-443, ss. 11A.118(a), 11A.119(a), 22.2(b); 1997-520, s. 3.)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 1997-443, s. 35.4, is a severability clause.

Subsection (c6), as added by Session Laws 1997-520, s. 3, was redesignated as subsection (c7) at the direction of the Revisor of Statutes.

Effect of Amendments. —

The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, rewrote subdivision (a)(2); added the subdivision (a)(3) designation; and substituted

"County employees not included under subdivision (2) of this subsection" for "employees" in subdivision (a)(3).

Session Laws 1997-443, ss. 11A.118(a) and 11A.119(a), effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" and substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

Session Laws 1997-443, s. 22.2(b), effective July 1, 1997, added subsection (c6).

Session Laws 1997-520, s. 3, effective September 17, 1997, rewrote subsection (b), which previously defined "policymaking position", inserted "exempt" and deleted "as exempt" preceding "pursuant" in subdivision (c)(3), added subsection (c7), rewrote subdivisions (d)(1) and (d)(2), added the subdivision (d)(2a) designation and made stylistic changes in the subdivision, substituted "a position as an exempt position" for "a policymaking position as exempt" in subdivision (d)(6), and inserted "or her" in the introductory language of subsection (e).

CASE NOTES

This section controls which employees are subject to Chapter 126. Conran v. New Bern Police Dep't, 122 N.C. App. 116, 468 S.E.2d 258 (1996).

Not All Local Government Employees Covered. — The legislature did not intend for local city or county employees to be included in the class of persons protected by Chapter 126. Conran v. New Bern Police Dep't, 122 N.C. App. 116, 468 S.E.2d 258 (1996).

Director of Highway Beautification Program Not Policymaking Position. — There was not substantial record evidence to support the Commission's conclusion that the Director of the Highway Beautification Program had the authority within the Department of Transportation to impose the final decision as to a settled course of action to be followed within a department, agency, or division as is required for designation of her position as "policymaking". Powell v. North Carolina DOT, 124 N.C. App. 542, 478 S.E.2d 28 (1996), cert. granted, 345 N.C. 643, 483 S.E.2d 711 (1997).

Applied in Powell v. North Carolina DOT, 124 N.C. App. 542, 478 S.E.2d 28 (1996).

§ 126-6.2. Reports.

(a) Beginning January 1, 1998, and quarterly thereafter, the head of each State agency, department, or institution employing State employees subject to the State Personnel Act shall report to the Office of State Personnel on the following:

(1) The costs associated with the defense or settlement of administrative grievances and lawsuits filed by current or former State employees and applicants for State employment, including the costs of settlements, attorneys' fees, litigation expenses, damages, or awards incurred by the respective State agencies, departments, and institutions. The report shall include an explanation of the fiscal impact of these costs upon the operations of the State agency, department, or institution.

(2) The modification of position descriptions resulting in changes in position qualifications to allow the use of educational, experience, or other equivalencies in the hiring or promotion of State employees where such equivalencies were not previously used in the position descriptions. The report shall include an explanation of the reasons for the changes in the position descriptions and the bases for the use of the equivalencies.

(b) Beginning May 1, 1998, and annually thereafter, the State Personnel Commission shall report to the Joint Legislative Commission on Governmental Operations on the costs associated with the defense or settlement of lawsuits and on the use of position qualification equivalencies, as compiled in accordance with subsection (a) of this section.

(c) Beginning May 1, 1998, and then annually thereafter, the State Personnel Commission, through the Office of State Personnel, shall report to the Joint Legislative Commission on Governmental Operations on outcomes with respect to State employee hirings, promotions, disciplinary actions, and compensation, based upon demographics. (1997-520, s. 8(a)-(c).)

Editor's Note. — Session Laws 1997-520, s. 8(a)-(c), were codified as this section at the direction of the Revisor of Statutes.

Session Laws 1997-520, s. 8(d) and (e), provide: "(d) By May 1, 1998, the State Personnel Commission shall report to the Joint Legislative Commission on Governmental Operations on its development of a systematized approach to State employee recruitment utilizing standards and measures of outcomes across agency lines.

"(e) By May 1, 1998, the State Personnel Commission shall conduct a study and make a report to the Joint Legislative Commission on Governmental Operations on the salary administration of positions exempt from the State Personnel Act as it relates to the placement of exempt positions in the salary range."

ARTICLE 2.

Salaries, Promotions, and Leave of State Employees.

§ 126-7. Compensation of State employees.

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 28.18 provides in part that the Study Commission on the Comprehensive Compensation is created. The Commission shall evaluate the compensation system established in Article 2 of Chapter 126 of the General Statutes and determine a methodology for funding the pay plan for State employees at varying levels of appropriations to fund State pay increases. The Commission shall submit a final report of its findings and recommendations to the General Assembly on or before the first day of the 1997 Session and upon filing its final report, the Commission shall terminate.

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1997-443, s. 33.18, provides for an increase in salaries in effect June 30, 1997, of all permanent full-time State employees whose salaries are set in accordance with the State Personnel Act and who are paid from the General Fund or the Highway Fund, pursuant to the Comprehensive Compensation System set forth in G.S. 126-7 and rules adopted by the State Personnel Commission.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.' "

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

§ 126-7.1. Posting requirement; State employees receive priority consideration; reduction-in-force rights; Work First hiring.

(a) All vacancies for which any State agency, department, or institution openly recruit shall be posted within at least the following:

(1) The personnel office of the agency, department, or institution having the vacancy; and

(2) The particular work unit of the agency, department, or institution having the vacancy

in a location readily accessible to employees. If the decision is made, initially or at any time while the vacancy remains open, to receive applicants from outside the recruiting agency, department, or institution, the vacancy shall be listed with the Office of State Personnel for the purpose of informing current State employees of such vacancy. The State agency, department, or institution may not receive approval from the Office of State Personnel to fill a job vacancy if the agency, department, or institution cannot prove to the satisfaction of the Office of State Personnel that it complied with these posting requirements. The agency, department, or institution which hires any person in violation of these posting requirements shall pay such person when employment is discontinued as a result of such violation for the work performed during the period of time between his initial employment and separation.

(a1) State employees to be affected by a reduction in force shall be notified of the reduction in force as soon as practicable, and in any event, no less than 30 days prior to the effective date of the reduction in force.

(a2) The State Personnel Commission shall adopt rules to provide that priority consideration for State employees separated from State employment as the result of reductions in force is to enable a State employee's return to career service at a salary grade and salary rate equal to that held in the most recent position. The State Personnel Commission shall provide that a State employee who:

(1) Accepts a position at the same salary grade shall be paid at the same salary rate as the employee's previous position.

(2) Accepts a position at a lower salary grade than the employee's previous position shall be paid at the same rate as the previous position unless the salary rate exceeds the maximum of the new salary grade. When the salary rate exceeds the maximum of the salary grade, the employee's new salary rate shall be reduced to the maximum of the new salary grade.

(b) Subsection (a) of this section does not apply to vacancies which must be filled immediately to prevent work stoppage or the protection of the public health, safety, or security.

(c) If a State employee subject to this section:

(1) Applies for another position of State employment that would constitute a promotion and;

(2) Has substantially equal qualifications as an applicant who is not a State employee

then the State employee shall receive priority consideration over the applicant who is not a State employee. This priority consideration shall not apply when the only applicants considered for the vacancy are current State employees.

(c1) If a State employee who has been separated due to reduction in force or who has been given notice of imminent separation due to reduction in force:

(1) Applies for another position of State employment equal to or lower in salary grade than the position held by the employee at the time of notification or separation; and

(2) Is determined qualified for that position

then within all State agencies, the State employee shall receive priority consideration over all other applicants but shall receive equal consideration with other applicants who are current State employees not affected by the reduction in force. This priority shall remain in effect for a period of 12 months from the date the employee receives notification of separation by reduction in force. State employees separated due to reduction in force shall receive higher priority than other applicants with employment or reemployment priorities, except that the reemployment priority created by G.S. 126-5(e)(1) shall be considered as equal. The reduction-in-force priority created by this subsection shall be administered in accordance with rules promulgated by the State Personnel Commission.

(c2) If the applicants for reemployment for a position include current State employees, a State employee with more than 10 years of service shall receive priority consideration over a State employee having less than 10 years of service in the same or related position classification. This reemployment priority shall be given by all State departments, agencies, and institutions with regard to positions subject to this Chapter.

(d) "Qualifications" within the meaning of subsection (c) of this section shall consist of:

(1) Training or education;

(2) Years of experience; and

(3) Other skills, knowledge, and abilities that bear a reasonable functional relationship to the abilities and skills required in the job vacancy applied for.

(e) Each State agency, department, and institution is encouraged to hire into State government employment qualified applicants who are current or former Work First Program participants. (1987, c. 689, s. 2; 1991, c. 65, s. 4; c. 474, s. 1; 1995, c. 141, s. 9; c. 507, s. 7.20(a); 1997-443, s. 12.7(d).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, added "Work First hiring" in the catchline; and added subsection (e).

CASE NOTES

Priority Consideration. — Where nurse was a state employee who applied for a supervisory nursing position of state employment, and there was substantial evidence to support the finding that petitioner's qualifications were "substantially equal" to the non-state employee applicant, the State Personnel Commission did not err in applying the state employee priority consideration provision. Dockery v. North Carolina Dep't of Human Resources, 120 N.C. App. 827, 463 S.E.2d 580 (1995).

ARTICLE 3.

Local Discretion as to Local Government Employees.

§ 126-11. Local personnel system may be established; approval and monitoring; rules and regulations.

CASE NOTES

Cited in Fuqua v. Rockingham County Bd. of Social Servs., 125 N.C. App. 66, 479 S.E.2d 273 (1996).

ARTICLE 5.

Political Activity of Employees.

§ 126-14.2. Political hirings limited.

(a) It is the policy of this State that State departments, agencies, and institutions select from the pool of the most qualified persons for State government employment based upon job-related qualifications of applicants for employment using fair and valid selection criteria.

(b) All State departments, agencies, and institutions shall select from the pool of the most qualified persons for State government employment without regard to political affiliation or political influence. For the purposes of this section, the "most qualified persons" shall mean each of the State employees or applicants for initial State employment who:

(1) Have timely applied for a position in State government;
(2) Have the essential qualifications for that position; and
(3) Are determined to be substantially more qualified as compared to other applicants for the position, after applying fair and valid job selection criteria, in accordance with G.S. 126-5(e), G.S. 126-7.1, Articles 6 and 13 of this Chapter, and State personnel policies approved by the State Personnel Commission.

(c) It is a violation of this section giving rise to the remedies set forth in G.S. 126-14.4 if:

(1) The complaining State employee or applicant for initial State employment timely applied for the State government position in question;
(2) The complaining State employee or applicant for initial State employment was not hired into the position;
(3) The complaining State employee or applicant for initial State employment was among the most qualified persons applying for the position as defined in this Chapter;
(4) The successful applicant for the position was not among the most qualified persons applying for the position; and
(5) The hiring decision was based upon political affiliation or political influence.

(d) The provisions of this section shall not apply to positions exempt from this Chapter, except that this section does apply to exempt managerial positions as defined by G.S. 126-5(b)(2). (1997-520, s. 1.)

Editor's Note. — Session Laws 1997-520, s. 9, made this section effective September 17, 1997.

§ 126-14.3. Open and fair competition.

The State Personnel Commission shall adopt rules or policies to:

(1) Assure recruitment, selection, and hiring procedures that encourage open and fair competition for positions in State government employment and that encourage the hiring of a diverse State government workforce.

(2) Assure the proper and thorough advertisement of job openings in State government employment and lengthen, as appropriate, the period for submitting applications for State government employment.

(3) Require that a closing date shall be posted for each job opening, unless an exception for critical classifications has been approved by the State Personnel Commission.

(4) Require that timely written notice shall be provided to each unsuccessful applicant for State employment who is in the pool of the most qualified applicants for a position, as defined by G.S. 126-14.2(b).

(5) Assure that State departments, agencies, and institutions follow similar selection processes when hiring State employees in accordance with this Chapter.

(6) Assure that State supervisory and management personnel, and personnel professionals, receive adequate training and continuing education to carry out the State's policy of hiring from among the most qualified persons.

(7) Establish a monitoring system to measure the effectiveness of State agency personnel procedures to promote fairness and reduce adverse impact on all demographic groups in the State government workforce.

(8) Otherwise implement the State's policy of nonpolitical hiring practices in accordance with this Chapter. (1997-520, s. 1.)

Editor's Note. — Session Laws 1997-520, s. 9, made this section effective September 17, 1997.

§ 126-14.4. Remedies.

(a) A State employee or applicant for initial State employment who has reason to believe that he or she was among the pool of the most qualified persons for a position in State government employment and was denied employment or promotion in violation of G.S. 126-14.2 because of political affiliation or political influence may complain directly through the Civil Rights Division of the Office of Administrative Hearings, which shall be responsible for making an initial determination of whether there is probable cause to believe that there has been a violation of G.S. 126-14.2.

The complaining State employee or applicant shall file a complaint with the Civil Rights Division of the Office of Administrative

Hearings within 30 days after the complainant receives written notice that the position in question has been filled.

The Civil Rights Division of the Office of Administrative Hearings shall promptly make appropriate formal and informal inquiries in its investigatory, fact-finding role and may consider any matter, document, or statement deemed pertinent to the initial determination, including telephone conversations, in determining if there is probable cause to believe there has been a violation of G.S. 126-14.2. The Civil Rights Division may apply to an administrative law judge in the Office of Administrative Hearings for the issuance of oaths and subpoenas under G.S. 7A-756. The investigation and fact-finding phase of the complaint shall be completed by the Civil Rights Division within 30 days.

(b) The Civil Rights Division of the Office of Administrative Hearings shall notify the person alleged to have been hired in violation of G.S. 126-14.2 of the appeal, and the person may present any information to the Civil Rights Division that is pertinent to the initial determination of probable cause. The person alleged to have been hired in violation of G.S. 126-14.2 shall be notified of the results of the initial determination and shall have a right to intervene in any administrative proceedings pursuant to G.S. 150B-23(d).

(c) Upon an initial determination that there is probable cause to believe there has been a violation of G.S. 126-14.2, the complainant may file within 15 days a petition for a contested case pursuant to G.S. 126-34.1 and Article 3 of Chapter 150B of the General Statutes.

(d) An initial determination by the Civil Rights Division that there is not probable cause to believe there has been a violation of G.S. 126-14.2 shall be conclusive of any rights under that section but shall not be admissible or binding in any separate or subsequent civil action or proceeding.

(e) Within 90 days after the filing of a contested case petition, the administrative law judge shall issue a recommended decision to the State Personnel Commission which shall include findings of fact and conclusions of law and, if the administrative law judge has found a violation of G.S. 126-14.2, an appropriate recommended remedy.

(f) Within 60 days of receipt of the official record by the Office of Administrative Hearings, the State Personnel Commission shall make a final written decision as to whether there has been a violation of G.S. 126-14.2. In any case where a violation is found, the State Personnel Commission shall take suitable action to correct the violation, which may include:

(1) Directing the State agency, department, or institution to declare the position vacant, and to hire from among the most qualified State employees or applicants for initial State employment who had applied for the position, or

(2) Requiring that the vacancy be posted pursuant to this Chapter.

(g) A career State employee with:

(1) Less than 10 years of service who was placed in an exempt managerial position, as defined by G.S. 126-5(b)(2), shall be given priority consideration for a position at the same salary grade equal to that held in the most recent position prior to the promotion if he or she has to vacate because of violation of G.S. 126-14.2.

(2) 10 or more years of service who was placed in an exempt managerial position, as defined by G.S. 126-5(b)(2), shall be

placed in a comparable position at the same grade and salary equal to that held in the most recent position prior to the promotion if he or she had to vacate because of violation of G.S. 126-14.2. (1997-520, s. 2.)

Editor's Note. — Session Laws 1997-520, s. 9, made this section effective September 17, 1997.

ARTICLE 6.

Equal Employment and Compensation Opportunity; Assisting in Obtaining State Employment.

§ 126-16. Equal opportunity for employment and compensation by State departments and agencies and local political subdivisions.

CASE NOTES

Quoted in Conran v. New Bern Police Dep't, 122 N.C. App. 116, 468 S.E.2d 258 (1996).

Cited in Braswell v. Ellis, 950 F. Supp. 145 (E.D.N.C. 1995).

ARTICLE 7.

The Privacy of State Employee Personnel Records.

§ 126-22. Personnel files not subject to inspection under § 132-6.

CASE NOTES

Breach of Confidentiality Not Shown. — There was insufficient evidence to show that employee "breached confidentiality" or that he "failed to provide complete responses to questions" causing the "omission of important facts" at officer's disciplinary hearing where the record showed that his comments were directed towards the handling of the pre-disciplinary conference for not being conducted behind closed doors and for being conducted rudely and loudly. These comments were not breaches of confidentiality, but rather criticisms of the manner and method of conducting pre-disciplinary hearings. North Carolina Dep't of Cors. v. Myers, 120 N.C. App. 437, 462 S.E.2d 824 (1995).

ARTICLE 8.

Employee Appeals of Grievances and Disciplinary Action.

§ 126-34.1. Grounds for contested case under the State Personnel Act defined.

(a) A State employee or former State employee may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes only as to the following personnel actions or issues:

(1) Dismissal, demotion, or suspension without pay based upon an alleged violation of G.S. 126-35, if the employee is a career State employee.

(2) An alleged unlawful State employment practice constituting discrimination, as proscribed by G.S. 126-36, including:

  a. Denial of promotion, transfer, or training, on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by Chapter 168A of the General Statutes.

  b. Demotion, reduction in force, or termination of an employee in retaliation for the employee's opposition to alleged discrimination on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by Chapter 168A of the General Statutes.

(3) Retaliation against an employee, as proscribed by G.S 126-17, for protesting an alleged violation of G.S. 126-16.

(4) Denial of the veteran's preference granted in accordance with Article 13 of this Chapter in initial State employment or in connection with a reduction in force, for an eligible veteran as defined by G.S. 126-81.

(5) Denial of promotion for failure to post or failure to give priority consideration for promotion or reemployment, to a career State employee as required by G.S. 126-7.1 and G.S. 126-36.2.

(6) Denial of an employee's request for removal of allegedly inaccurate or misleading information from the employee's personnel file as provided by G.S. 126-25.

(7) Any retaliatory personnel action that violates G.S. 126-85.

(8) Denial of promotion in violation of G.S. 126-14.2, where an initial determination found probable cause to believe there has been a violation of G.S. 126-14.2.

(9) Denial of employment in violation of G.S. 126-14.2, where an initial determination found probable cause to believe that there has been a violation of G.S. 126-14.2.

(b) An applicant for initial State employment may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon:

(1) Alleged denial of employment in violation of G.S. 126-16.

(2) Denial of the applicant's request for removal of allegedly inaccurate or misleading information from the personnel file as provided by G.S. 126-25.

(3) Denial of equal opportunity for employment and compensation on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by Chapter 168A of the General Statutes. This subsection with respect to equal opportunity as to age shall be limited to persons who are at least 40 years of age. An applicant may not, however, file a contested case where political affiliation was the reason for the person's nonselection for (i) an exempt policymaking position as defined in G.S. 126-5(b)(3), (ii) a chief deputy or chief administrative assistant position under G.S. 126-5(c)(4), or (iii) a confidential assistant or confidential secretary position under G.S. 126-5(c)(2).

(4) Denial of the veteran's preference in initial State employment provided by Article 13 of this Chapter, for an eligible veteran as defined by G.S. 126-81.

(5) Denial of employment in violation of G.S. 126-14.2, where an initial determination found probable cause to believe that there has been a violation of G.S. 126-14.2.

(c) In the case of a dispute as to whether a State employee's position is properly exempted from the State Personnel Act under G.S. 126-5, the employee may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes.

(d) A State employee or applicant for State employment may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon a false accusation regarding, or disciplinary action relating to, the employee's alleged violation of G.S. 126-14 or G.S. 126-14.1.

(e) Any issue for which appeal to the State Personnel Commission through the filing of a contested case under Article 3 of Chapter 150B of the General Statutes has not been specifically authorized by this section shall not be grounds for a contested case under Chapter 126. (1995, c. 141, s. 7; 1997-520, s. 4.)

Effect of Amendments. — The 1997 amendment, effective September 17, 1997, added subdivisions (a)(7), (a)(8), (a)(9), and (b)(5), deleted "employee's" preceding "personnel file" in subdivision (b)(2), inserted "political affiliation" in the first sentence of subdivision (b)(3), and added the last sentence of subdivision (b)(3).

CASE NOTES

Legislative Intent. — By enacting this section, the General Assembly has indicated its intent to create grounds for appeal to the Commission through a contested case hearing only on issues for which appeal has been specifically authorized in this section. Dunn v. North Carolina Dep't of Human Resources, 124 N.C. App. 158, 476 S.E.2d 383 (1996).

§ 126-35. Just cause; disciplinary actions for State employees.

CASE NOTES

Burden of Proof. — The State Personnel Commission was correct in requiring the Employment Security Commission to carry the burden of proving petitioner was terminated for just cause. Emp. Sec. Comm'n v. Peace, 122 N.C. App. 313, 470 S.E.2d 63 (1996).

Failure to Show Just Cause. — The State Personnel Commission did not err in its conclusion that the Employment Security Commission failed to show "just cause" for its dismissal of petitioner. Emp. Sec. Comm'n v. Peace, 122 N.C. App. 313, 470 S.E.2d 63 (1996).

Procedural Safeguards. — Procedural safeguards within subsection (a) serve as a prophylactic protection against summary dismissal based on inadequate notice. Owen v. UNC-G Physical Plant, 121 N.C. App. 682, 468 S.E.2d 813 (1996), discretionary review improvidently allowed, 344 N.C. 73, 477 S.E.2d 33 (1996).

Failure to include the specific names of the employee's accusers in her dismissal letter prejudiced her ability to fully prepare her appeal. Owen v. UNC-G Physical Plant, 121 N.C. App. 682, 468 S.E.2d 813 (1996), discretionary review improvidently allowed, 344 N.C. 73, 477 S.E.2d 33 (1996).

Dismissal Upheld. —

Dismissal of State Bureau of Investigation (SBI) agent for failure to comply with five day deadline for SBI agents to file reports was reasonable where the rule was promulgated for the purpose of providing timely written reports to district attorneys, to aid in prosecution, and to enhance the credibility of the testimony of SBI agents and the rule also provided that for legitimate reasons, the five day requirement could be extended. Gainey v. North Carolina Dep't of Justice, 121 N.C. App. 253, 465 S.E.2d 36 (1996).

State Personnel Commissioner did not err in affirming dismissal based on warnings that occurred two years prior to the actual dismissal, especially when the earlier violations related to the very reasons for which the employee was dismissed. Gainey v. North Carolina Dep't of Justice, 121 N.C. App. 253, 465 S.E.2d 36 (1996).

Applied in King v. North Carolina DOT, 121 N.C. App. 706, 468 S.E.2d 486 (1996); Soles v. City of Raleigh Civil Serv. Comm'n, 345 N.C. 443, 480 S.E.2d 685 (1997).

Cited in Soles v. City of Raleigh Civil Serv. Comm'n, 119 N.C. App. 88, 457 S.E.2d 746 (1995); Williams v. North Carolina Dep't of Economic & Community Dev., 119 N.C. App. 535, 458 S.E.2d 750 (1995); Gray v. Laws, 915 F. Supp. 747 (E.D.N.C. 1994).

§ 126-36. Appeal of unlawful State employment practice.

CASE NOTES

Cited in Booth v. North Carolina Dep't of Env't, Health & Natural Resources, 899 F. Supp. 1457 (E.D.N.C. 1995).

§ 126-36.1. Appeal to Personnel Commission by applicant for employment.

CASE NOTES

Intermittent employee of Employment Security Commission (ESC) had a right to appeal ESC's allegedly discriminatory action to the personnel commission. Clay v. Employment Sec. Comm'n, 340 N.C. 83, 457 S.E.2d 725 (1995).

Cited in Booth v. North Carolina Dep't of Env't, Health & Natural Resources, 899 F. Supp. 1457 (E.D.N.C. 1995).

§ 126-37. Personnel Commission to review Administrative Law Judge's recommended decision and make final decision.

CASE NOTES

Reinstatement Proper Though Not Identical. — Where employee was returned to the same pay grade and step as before his demotion even though the job was at a different location, he was properly reinstated. North Carolina Dep't of Cors. v. Myers, 120 N.C. App. 437, 462 S.E.2d 824 (1995).

Discretion of Personnel Commission. —

Although this section authorizes the State Personnel Commission to reinstate an employee to the position from which he is removed and to order the transfer of an employee to whom it has been wrongfully denied, that authority is discretionary. North Carolina Dep't of Cors. v. Myers, 120 N.C. App. 437, 462 S.E.2d 824 (1995).

Quoted in Conran v. New Bern Police Dep't, 122 N.C. App. 116, 468 S.E.2d 258 (1996).

Stated in Gray v. Laws, 915 F. Supp. 747 (E.D.N.C. 1994).

Cited in Beauchesne v. University of N.C, 125 N.C. App. 457, 481 S.E.2d 685 (1997).

§ 126-38. Time limit for appeals.

CASE NOTES

Stated in Clay v. Employment Sec. Comm'n, 340 N.C. 83, 457 S.E.2d 725 (1995).

§ 126-39. Scope of this Article.

CASE NOTES

An intermittent state employee is not an "employee", etc. —

Petitioner, an intermittent state employee was not an "employee" for purposes of this chapter governing state personnel system which applies only to "career State employees" and which establishes the time limit for appeals, for employees and not applicants for employment like petitioner. Clay v. Employment Sec. Comm'n, 340 N.C. 83, 457 S.E.2d 725 (1995).

§ 126-41. Attorney and witness fees.

CASE NOTES

Attorney Fees. — Upon appeal of the Commission's decision not to award attorney's fees under § 126-4(11), this section constrains the Superior Court to reverse or modify the Commission's order only if it is deemed unreasonable or inadequate. Morgan v. North Carolina DOT, 124 N.C. App. 180, 476 S.E.2d 431 (1996).

Cited in Williams v. North Carolina Dep't of Economic & Community Dev., 119 N.C. App. 535, 458 S.E.2d 750 (1995).

Article 12.

Work Options Program for State Employees.

§ 126-75. Work options for State employees.

CASE NOTES

Cited in Wiebenson v. Board of Trustees, 123 N.C. App. 246, 472 S.E.2d 592 (1996).

Article 13.

Veteran's Preference.

§ 126-80. Declaration of policy.

CASE NOTES

Cited in Dunn v. North Carolina Dep't of Human Resources, 124 N.C. App. 158, 476 S.E.2d 383 (1996).

§ 126-82. State Personnel Commission to provide for preference.

CASE NOTES

Veteran's Preference. — The Commission's rule that the veteran's preference applies only to "initial selection" and "reduction in force" situations was reasonable and permissible. Dunn v. North Carolina Dep't of Human Resources, 124 N.C. App. 158, 476 S.E.2d 383 (1996).

Article 14.

Protection for Reporting Improper Government Activities.

§ 126-84. Statement of policy.

(a) It is the policy of this State that State employees shall be encouraged to report verbally or in writing to their supervisor, department head, or other appropriate authority, evidence of activity by a State agency or State employee constituting:

(1) A violation of State or federal law, rule or regulation;
(2) Fraud;
(3) Misappropriation of State resources;
(4) Substantial and specific danger to the public health and safety; or
(5) Gross mismanagement, a gross waste of monies, or gross abuse of authority.

(b) Further, it is the policy of this State that State employees be free of intimidation or harassment when reporting to public bodies about matters of public concern, including offering testimony to or testifying before appropriate legislative panels. (1989, c. 236, s. 1; 1997-520, s. 5.)

Effect of Amendments. — The 1997 amendment, effective September 17, 1997, added the subsection (a) designation, added subdivision (a)(5), making related changes, and added subsection (b).

CASE NOTES

Cited in Aune v. University of N.C., 120 N.C. App. 430, 462 S.E.2d 678 (1995).

§ 126-85. Protection from retaliation.

(a) No head of any State department, agency or institution or other State employee exercising supervisory authority shall discharge, threaten or otherwise discriminate against a State employee regarding the State employee's compensation, terms, conditions, location, or privileges of employment because the State employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in G.S. 126-84, unless the State employee knows or has reason to believe that the report is inaccurate.

(a1) No State employee shall retaliate against another State employee because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in G.S. 126-84.

(b) No head of any State department, agency or institution or other State employee exercising supervisory authority shall discharge, threaten or otherwise discriminate against a State employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the State employee has refused to carry out a directive which in fact constitutes a violation of State or federal law, rule or regulation or poses a substantial and specific danger to the public health and safety.

(b1) No State employee shall retaliate against another State employee because the employee has refused to carry out a directive which may constitute a violation of State or federal law, rule or regulation, or poses a substantial and specific danger to the public health and safety.

(c) The protections of this Article shall include State employees who report any activity described in G.S. 126-84 to the State Auditor as authorized by G.S. 147-64.6(c)(16). (1989, c. 236, s. 1; 1997-520, s. 6.)

Effect of Amendments. — The 1997 amendment, effective September 17, 1997, added subsections (a1) and (b1).

CASE NOTES

Retaliatory Firing Not Shown. — Where the evidence was that there were questions regarding the adequacy of plaintiff's performance, of which plaintiff had knowledge, even before his reports and the nonappointment was based on the plaintiff's inability to collaborate with others the evidence was simply too speculative to support a finding that the plaintiff's nonrenewal was in any way related to the report. Aune v. University of N.C., 120 N.C. App. 430, 462 S.E.2d 678 (1995).

ARTICLE 15.

Communications With Members of the General Assembly.

§ 126-90. Communications with members of the General Assembly.

A State employee's right to speak to a member of the General Assembly at the member's request shall not be directly or indirectly limited by the employee's supervisor or by any policy of the department, agency, or institution that employs that State employee. (1997-443, s. 22.2(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 1997-443, s. 35.4, is a severability clause.

Session Laws 1997-443, s. 35.5, made this Article effective July 1, 1997.

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ARTICLE 2.

General Administrative Officers.

§ 127A-19. Adjutant General.

The military head of the militia shall be the Adjutant General who shall hold the rank of major general. The Adjutant General shall be appointed by the Governor in his capacity as commander in chief of the militia, in consultation with the Secretary of Crime Control and Public Safety, and shall serve at the pleasure of the Governor. No person shall be appointed as Adjutant General who has less than five years' commissioned service in an active status in any component of the armed forces of the United States. The Adjutant General, while holding such office, may be a member of the active national guard or naval militia.

Subject to the approval of the Governor and in consultation with the Secretary, Department of Crime Control and Public Safety, the Adjutant General may appoint a deputy adjutant general for Army National Guard, an assistant adjutant general for Army National Guard, and an assistant adjutant general for Air National Guard, each of whom may hold the rank of brigadier general and who shall serve at the pleasure of the Governor. The assistant adjutant general for Army National Guard shall also serve in the military position of Brigadier General — Line, Deputy, State Area Command (STARC) Commander. The Adjutant General may also employ such staff members and other personnel as may be authorized by the Secretary and funded. (1917, c. 200, s. 14; C.S., s. 6802; 1925, c. 54; 1939, c. 14; 1949, c. 1225; 1959, c. 218, s. 2; 1973, c. 620, s. 9; 1975, c. 604, s. 2; 1977, c. 70, s. 2; 1979, c. 481; 1995, c. 122, s. 1.)

Effect of Amendments. — The 1995 amendment, effective May 30, 1995, in the second paragraph, in the first sentence inserted "an assistant adjutant general for Army National Guard" preceding "and an assistant adjutant general" and substituted "each" for "both" preceding "of whom may hold"; added the second sentence in the second paragraph; and made stylistic changes.

ARTICLE 3.

National Guard.

§ 127A-40. Pensions for the members of the North Carolina national guard.

(a) Every member and former member of the North Carolina national guard who meets the requirements hereinafter set forth shall receive, commencing at age 60, a pension of fifty dollars ($50.00) per month for 20 years' creditable military service with an additional five dollars ($5.00) per month for each additional year of such service; provided, however, that the total pension shall not exceed one hundred dollars ($100.00) per month. The requirements for such pension are that each member shall:

(1) Have served and qualified for at least 20 years' creditable military service, including national guard, reserve and active duty, under the same requirement specified for entitlement to retired pay for nonregular service under Chapter 67, Title 10, United States Code.

(2) Have at least 15 years of the aforementioned service as a member of the North Carolina national guard.

(3) Have received an honorable discharge from the North Carolina national guard.

(b) Payment to a retired member of the North Carolina national guard under the provisions of this section will cease at the death of the individual and no payment will be made to beneficiaries or to the decedent's estate.

(c) No individual receiving retired pay as a result of length of service, age or physical disability retirement from any of the regular components of the armed forces of the United States will be eligible for benefits under this section.

(d) Nothing contained in this section shall preclude or in any way affect the benefits that an individual may be entitled to from State, federal or private retirement systems.

(e) Repealed by Session Laws 1989, c. 792, s. 2.3, effective for taxable years beginning on or after January 1, 1989.

(f) The Secretary of Crime Control and Public Safety shall determine the eligibility of guard members for the benefits herein provided and shall certify those eligible to the State Treasurer. In addition, the Department of Crime Control and Public Safety shall, on and after July 1, 1983, provide the Department of State Treasurer with an annual census population, by age and the number of years of creditable service, for all former members of the National Guard in receipt of a pension as well as for all active members of the National Guard who are not in receipt of a pension and who have seven and more years of creditable service. The Department of Crime Control and Public Safety shall also provide the State Treasurer a census population of all former members of the National Guard who are not in receipt of a pension and who have 15 and more years of creditable service. The Department of State Treasurer shall make pension payments to those persons certified from the North Carolina National Guard Pension Fund, which shall include general fund appropriations made to and transferred from the Department of Crime Control and Public Safety. The Department of State Treasurer shall have performed an annual actuarial valuation of the fund and shall have the financial responsibility for maintaining the fund on a generally accepted actuarial basis. The Department of Crime Control and Public Safety shall provide the Department of State Treasurer with whatever assistance is required by the State Treasurer in carrying out his financial responsibilities.

(g) The provisions of this section shall apply to any member or former member of the North Carolina national guard who is qualified for the above retirements with eligibility of such person commencing at age 60 or July 1, 1974, whichever is the later date.

(h) If, for any reason, the North Carolina National Guard Pension Fund shall be insufficient to pay in full any pension benefits, or other charges, then all benefits or payments shall be reduced pro rata, for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension or benefit payment shall have been reduced.

(i) Pensions for members of the North Carolina National Guard shall be subject to future legislative change or revision. (1973, c. 625, s. 1; c. 1241, ss. 1-3; 1975, c. 604, s. 2; 1977, c. 70, s. 2; 1979, c. 870; 1983, c. 761, ss. 250, 251; 1989, c. 792, s. 2.3.)

§ 127A-41.1. Stay of legal and court proceedings because of State military service.

At any stage of any legal proceeding in any court in which a person called into service of the State by the Governor is involved, either as plaintiff or defendant, during the period of service or within 60 days after the conclusion of the period of active service, all actions and proceedings:

(1) May be stayed by the court on its own motion; or

(2) Shall be stayed on application by the member or by a person acting on behalf of the member, unless, in the opinion of the court, the ability of the plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of the military service. (1997-153, s. 5.)

Editor's Note. — Session Laws 1997-153, s. 8, made this section effective December 1, 1997.

§ 127A-44. North Carolina National Guard Commendation Medal.

There is hereby created the North Carolina National Guard Commendation Medal which shall be of appropriate design, and a ribbon, together with a rosette or other device to be worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor or his designated representative. The Adjutant General of North Carolina or his designated representative, who shall not be below the rank of colonel (O-6), may award this medal. Any member or former member of the armed forces discharged under honorable conditions, who distinguishes himself by his example or the performance of a specific act in behalf of the North Carolina National Guard, is eligible for this award. (1975, c. 604, s. 2; 1977, c. 230, s. 3; 1991, c. 367, s. 2.)

§ 127A-44.1. North Carolina National Guard Achievement Medal.

There is hereby created the North Carolina National Guard Achievement Medal which shall be of appropriate design, and a ribbon, together with a rosette or other device to be worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor or his designated representative. The Adjutant General of North Carolina or his designated representative, who shall not be below the rank of lieutenant colonel (O-5), may award this medal. Any member or former member of the armed forces discharged under honorable conditions, who distinguishes himself by his example or the performance of a specific act in behalf of the North Carolina National Guard, is eligible for this award. (1991, c. 367, s. 3.)

Editor's Note. — Session Laws 1991, c. 367, s. 6, made this section effective October 1, 1991.

§ 127A-45. North Carolina National Guard State Active Duty Award.

There is hereby created the North Carolina National Guard State Active Duty Award which shall be a ribbon of appropriate design. This ribbon and appurtenances thereto shall be of a design approved by the Governor or his designated representative. The Adjutant General of North Carolina may present this ribbon to members of the North Carolina National Guard who, by order of the Governor, satisfactorily serve a tour of State active duty. To be worthy of this award, the nature of the tour of State active duty must have been a distinct and notable service to the State or to a community, as determined by the Adjutant General of North Carolina. On or after July 1, 1991, this award may also be presented to active guard personnel and reserve personnel who satisfactorily participate in tours of State active duty. (1973, c. 966, s. 2; 1975, c. 604, s. 2; 1991, c. 367, s. 1.)

§ 127A-45.2A. North Carolina National Guard Outstanding Unit Award.

There is hereby created the North Carolina National Guard Outstanding Unit Award which shall be a streamer, a unit emblem, and a certificate, all of appropriate design as approved by the Governor or his designated representative. The Adjutant General may present this citation to any unit of the North Carolina National Guard distinguishing itself through meritorious achievement or service to the State of North Carolina. The required meritorious service, while of a lesser degree than that required for the award of the North Carolina National Guard Meritorious Unit Citation, must nevertheless have been accomplished with distinction. (1991, c. 367, s. 4.)

Editor's Note. — Session Laws, 1991, c. 367, s. 6, made this section effective October 1, 1991.

§ 127A-45.5A. Other awards.

The Adjutant General may, from time to time, create such other awards and medals to recognize meritorious service or outstanding achievement. The creation of such awards and medals shall be approved by the Governor. The Governor or his designee shall approve the design of such awards and medals. (1991, c. 367, s. 5.)

Editor's Note. — Session Laws, 1991, c. 367, s. 6, made this section effective October 1, 1991.

§ 127A-50.1. Military judges.

The Adjutant General shall appoint military judges to preside over courts-martial of the National Guard not in federal service. Minimum requirements for appointment as a military judge shall be:

(1) Licensed to practice law in this State or certified as a military judge by the Judge Advocate General of the Army, Air Force, Navy, or Marines;
(2) Designation as a judge advocate by The Judge Advocate General of the Army, Navy, Air Force, or Marines; and
(3) Membership in the North Carolina National Guard, the National Guard of another state, or the active or reserve components of any of the military services. (1987, c. 649, s. 1.)

Editor's Note. — Session Laws 1987, c. 649, s. 2 made this section effective upon ratification. The act was ratified July 21, 1987.

Article 5.

State Defense Militia.

§ 127A-81. State defense militia cadre.

(a) The Governor is authorized: to organize and regulate part of the unorganized militia as a State defense militia cadre in units or commands which he may deem necessary to provide a cadre for an active State defense militia; to prescribe regulations for the maintenance of the property and equipment of the cadre, for the exercise of its discipline, and for its training and duties.

(b) The cadre shall be designated the "North Carolina State Defense Militia Cadre" and shall be composed of a force of officers and enlisted personnel raised by appointment of the Governor, or otherwise, as may be provided by law. The Secretary of the Department of Crime Control and Public Safety may reimburse cadre members for expenses actually incurred, not to exceed the amount appropriated and authorized for such purposes by the General Assembly.

(c) The Governor's authority hereunder shall not be subject to regulations prescribed by the Secretary of Defense. Age and membership requirements for the State defense militia generally, as set forth in G.S. 127A-80 shall apply. The training of the cadre need not be in accordance with training regulations issued by the Department of Defense. The provisions of G.S. 127A-80 (c), (d), (g), (h) and (i) shall also apply to cadres.

(d) The total authorized strength of the cadre, its authorized officer and enlisted strength, the composition of each of its units or commands, and the allocation of cadre units or commands among the counties, cities, and towns of the State, shall be as prescribed by the Governor in suitable regulations enforced through the Adjutant General, or as otherwise provided by law.

(e) The duties of the State defense militia cadre shall be as ordered and directed by the Governor from time to time, or in regulations, and may include authority to take charge of armories and other military installations and real properties used by the North Carolina national guard, together with such other property as the regulations may provide, when and if the North Carolina national guard, or any part thereof, may be inducted into the service of the United States, or, for any extended period of time, may be absent on any duty from its home station. In addition, the cadre shall have duties appropriate to the organization, maintenance, and training of a military cadre to act as a nucleus for the organization of an active State defense militia whenever the necessity may arise. (1963, c. 1016, s. 1; 1975, c. 604, s. 2; 1977, c. 70, s. 2; 1983, c. 314, s. 4; 1991 (Reg. Sess., 1992), c. 1030, s. 35.)

ARTICLE 8.

Pay of Militia.

§ 127A-105. Rations and pay on State service.

The militia of the State, both officers and enlisted personnel, when called into the service of the State by the Governor shall receive the same pay as when called or ordered into the service of the United States, and shall be rationed or paid the equivalent thereof, provided that no officer or enlisted personnel shall receive less than 18 times the minimum hourly wage per day as provided for in G.S. 95-25.3(a). (1813, c. 850, s. 5, P.R.; R.C., c. 70, s. 84; Code, s. 3248; Rev., s. 4856; 1907, c. 316; 1917, c. 200, s. 50; C.S., s. 6864; 1935, c. 452; 1959, c. 218, s. 17; 1975, c. 604, s. 2; 1997-153, s. 2; 1997-443, s. 7.12(c).)

Editor's Note. — Session Laws 1997-443, s. 7.12(c), changed the effective date of the amendment by Session Laws 1997-153 from December 1, 1997 to July 1, 1997.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "18" for "12" following "receive less than", and substituted "G.S.95-25.3(a)" for "G.S. 95-87".

§ 127A-106. Paid by the State.

When the militia or any portion thereof shall be ordered by the Governor into State service, the pay (including payment for any leave earned as a result of more than 30 days of continuous service), subsistence, transportation and other necessary expenses incident thereto shall be paid by the State Treasurer, upon the approval of the Governor. (1917, c. 200, s. 52; C.S., s. 6866; 1975, c. 604, s. 2; 1993, c. 257, s. 12; 1997-153, s. 6; 1997-443, s. 7.12(c).)

Editor's Note. — Session Laws 1997-443, s. 7.12(c), changed the effective date of the amendment by Session Laws 1997-153 from December 1, 1997 to July 1, 1997.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "pay (including payment for any leave earned as a result of more than 30 days of continuous service)" for "pay".

§ 127A-107. Rate of pay for other service.

The Governor may, whenever the public service requires it, order upon special or regular duty any officer or enlisted member of the national guard or naval militia, and the expenses and compensation therefor of such officer and enlisted member shall be paid out of the appropriations made to the Department of Crime Control and Public Safety. Such officers and enlisted members shall receive the same rate of pay as officers and enlisted members of the same grade and like service of the regular service, provided that no such officer or enlisted member shall receive less than 18 times the minimum hourly wage per day as provided for in G.S. 95-25.3(a). Officers and enlisted members when on duty in connection with examining boards, efficiency boards, advisory boards, courts of inquiry or similar duty shall be allowed per diem and subsistence prescribed for lawful State boards and commissions generally for such duty. Officers and enlisted members serving on general or special courts-martial shall receive the base pay of their rank. No staff officer or enlisted member who receives a salary from the State as such shall be entitled to any additional compensation other than actual and necessary expenses incurred while traveling upon orders issued by the proper authority. (1917, c. 200, s. 51; C.S., s. 6865; 1935, c. 451; 1949, c. 1130, s. 4; 1959, c. 218, s. 18; 1963, c. 1019, s. 1; 1969, c. 986; 1971, c. 204; 1973, c. 620, s. 9; 1975, c. 604, s. 2; 1977, c. 70, s. 2; 1997-153, s. 3; 1997-443, s. 7.12(c).)

Editor's Note. — Session Laws 1997-443, s. 7.12(c), changed the effective date of the amendment by Session Laws 1997-153 from December 1, 1997 to July 1, 1997.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, in the second sentence substituted "18" for "12", and substituted "G.S. 95-25.3(a)" for "G.S.95-87".

§ 127A-111. Civilian leave option.

(a) A member of the North Carolina National Guard called into service of the State by the Governor shall have the right to take leave without pay from his or her civilian employment. No member of the North Carolina National Guard shall be forced to use or exhaust his or her vacation or other accrued leaves from his or her civilian employment for a period of active service. The choice of leave shall be solely within the discretion of the member.

(b) The Commissioner of Labor shall enforce the provisions of this section pursuant to Chapter 95 of the General Statutes. (1997-153, s. 4.)

Editor's Note. — Session Laws 1997-153, s. 8, made this section effective December 1, 1997.

ARTICLE 10.

Care of Military Property.

§ 127A-131. Unlawful conversion or willful destruction of military property.

(a) If any person shall willfully or wantonly destroy or injure, willfully retain after demand made or otherwise convert to his own use any property of the State or of the United States issued for the purpose of arming or equipping the militia of the State or if any person shall purchase any property of the State or of the United States knowing it to be unlawfully obtained, he shall be guilty of a Class 1 misdemeanor.

(b) Any person, firm or corporation receiving in pledge or buying from any other person, firm or corporation for the purpose of resale any goods, to include arms, ammunition, explosives, equipment, clothing, supplies and materials, which may reasonably be thought to be the property of the armed forces of the United States and their reserve components or of the militia of the State of North Carolina, shall keep a register and shall enter therein a true and accurate record of each purchase, showing the name, social security number and address of the person from whom purchased, the name and address of the firm or corporation from whom purchased, together with the amount paid for each item or lot of small items, the date of purchase, the serial numbers of all items bearing serial numbers, and any other marks, brands or descriptions which will serve to identify the items purchased. The register shall be at all times open to the inspection of the public. Any person, firm or corporation failing to comply with this provision shall be guilty of a Class 1 misdemeanor; and any person, firm or corporation making a false entry in such register shall be guilty of a Class 1 misdemeanor. (1876-7, c. 272, s. 19; Code, s. 3274; Rev., ss. 3536, 3537; C.S., ss. 6881, 6882; 1959, c. 218, s. 25; 1963, c. 1019, s. 6; 1975, c. 604, s. 2; 1993, c. 539, s. 936; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 936, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 12.

General Provisions.

§ 127A-151. Organizing company without authority.

If any person shall organize a military company, or drill or parade under arms as a military body, except under the militia laws and regulations of the State, or shall exercise or attempt to exercise the power or authority of a military officer in this State, without holding a commission from the Governor, he shall be guilty of a Class 1 misdemeanor. (1893, c. 374, s. 38; Rev., s. 3538; C.S., s. 6894; 1975, c. 604, s. 2; 1993, c. 539, s. 937; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 937, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 127A-152. Placing name on muster roll wrongfully.

If any officer of the militia of the State shall knowingly or willfully place, or cause to be placed, on any muster roll the name of any person not regularly or lawfully enlisted, or the name of any enlisted man who is dead or who has been discharged, transferred, or has lost membership for any cause whatsoever, or who has been convicted of any infamous crime, he shall be guilty of a Class 1 misdemeanor. (1893, c. 374, s. 33; Rev., s. 3539; C.S., s. 6895; 1975, c. 604, s. 2; 1993, c. 539, s. 938; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 935, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 15.

North Carolina National Guard Tuition Assistance Act of 1975.

§ 127A-192. Definitions.

(a) "Business or Trade School". — Any school within the State of North Carolina which is licensed by the State Board of Education and listed by that Board as an approved private business school or an approved private trade school.

(b) "Private Educational Institutions". — Any junior college, senior college or university which is operated and governed by private interests not under the control of the federal, State or any local government, which is located within and licensed by the State of North Carolina, which does not operate for profit, whose curriculum is primarily directed toward the awarding of associate, baccalaureate or graduate degrees, which agrees to the applicable administration and funding provisions of this Article.

(c) "Secretary". — The Secretary of Crime Control and Public Safety or his designee.

(d) "State Educational Institutions". — Any of the constituent institutions of the University of North Carolina, or any community college operated under the provisions of Chapter 115D of the General Statutes of North Carolina.

(e) "Academic Year". — Any period of 365 days beginning with the first day of enrollment for a course of instruction. (1975, c. 917, s. 4; 1977, c. 70, s. 2; c. 228, s. 1; 1987, c. 564, s. 24.)

§ 127A-193. Benefit.

The benefit provided under this Article shall consist of a monetary educational assistance grant not to exceed one thousand dollars ($1,000) per academic year to qualifying members of the North Carolina national guard. Benefits shall be payable for a period of one academic year at a time, renewable at the option of the Secretary for a maximum of four thousand dollars ($4,000). (1975, c. 917, s. 5; 1977, c. 228, s. 2; 1983 (Reg. Sess., 1984), c. 1034, ss. 99, 100; 1993 (Reg. Sess., 1994), c. 769, s. 22.3.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

§ 127A-194. Eligibility.

(a) Active members of the North Carolina national guard who are enrolled or who shall enroll in any business or trade school, private educational institution or State educational institution shall be eligible to apply for this tuition assistance benefit: Provided, that the applicant has a minimum obligation of two years remaining as a member of the national guard from the end of the academic period for which tuition assistance is provided or that the applicant commit himself or herself to extended membership for at least two additional years from the end of said academic period.

(b) This tuition assistance benefit shall be applicable to students in the following categories:

(1) Students seeking to achieve completion of their secondary school education at a community college [or technical institute].
(2) Students seeking trade or vocational training or education.
(3) Students seeking to achieve a two-year associate degree.
(4) Students seeking to achieve a four-year baccalaureate degree.
(5) Students seeking to achieve a graduate degree. (1975, c. 917, s. 6; 1977, c. 228, ss. 3, 4.)

Editor's Note. — Session Laws 1987, c. 564, s. 12, effective July 6, 1987, directed that "community college" be substituted for "community college or technical institute" in subdivision (b)(1) of § 127-194. At the direction of the Revisor of Statutes, the phrase "or technical institute" has been placed in brackets at the end of subdivision (b)(1) of this section, which was apparently the section intended to be amended by the 1987 act.

ARTICLE 16.

National Guard Reemployment Rights.

§ 127A-202.1. Discrimination against persons who serve in the North Carolina National Guard and acts of reprisal prohibited.

(a) It is the policy of this State that all individuals shall be afforded the right to perform, apply to perform, or have an obligation to perform service in the North Carolina National Guard without fear of discrimination or retaliatory action from their employer or prospective employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(b) An individual who is a member of the North Carolina National Guard who performs, has performed, applies to perform, or has an obligation to perform service in the North Carolina National Guard shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(c) A person shall be considered to have denied a member of the North Carolina National Guard initial employment, reemployment, retention in employment, promotion, or a benefit of employment in violation of this section if the member's membership, application for membership, performance of service, application for service, or obligation for service in the North Carolina National Guard is a motivating factor in that person's action, unless the person can prove by the greater weight of the evidence that the same unfavorable action would have taken place in the absence of the member's membership, application for membership, performance of service, application for service, or obligation.

(d) Nothing in this section shall be construed to require a person to pay salary or wages to a member of the North Carolina National Guard during the member's period of active service.

(e) The Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to that Article. (1997-153, s. 1.)

Editor's Note. — Session Laws 1997-153, s. 8, made this section effective December 1, 1997.

Chapter 127B.

Military Affairs.

Article 1.

Military Property Sales Facilities.

Sec.
127B-5. Perjury; punishment.
127B-7. Penalties.

Article 2.

Discrimination Against Military Personnel.

Sec.
127B-15. Penalties.

ARTICLE 1.

Military Property Sales Facilities.

§ 127B-5. Perjury; punishment.

Any person who shall willfully commit perjury in any application for a permit pursuant to this Article shall be guilty of a Class 1 misdemeanor. (1985, c. 522, s. 1; 1993, c. 539, s. 939; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 127B-7. Penalties.

Any dealer who violates the provisions of this Article shall be guilty of a Class 2 misdemeanor. In addition, any dealer convicted of violating this Article shall be ineligible for a dealer's permit for a period of three years from the date of conviction. Each violation shall constitute a separate and distinct offense. (1985, c. 522, s. 1; 1993, c. 539, s. 940; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 940, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 2.

Discrimination Against Military Personnel.

§ 127B-14. Employer discrimination prohibited.

Legal Periodicals. — For article, "North Carolina Employment Law After Coman: Reaffirming Basic Rights in the Workplace," see 24 Wake Forest L. Rev. 905 (1989).

§ 127B-15. Penalties.

Any person who violates the provisions of this Article shall be deemed guilty of a Class 2 misdemeanor. Each violation shall constitute a separate and distinct offense. (1985, c. 522, s. 1; 1993, c. 539, s. 941; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 941, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Legal Periodicals. — For article, "North Carolina Employment Law After Coman: Reaffirming Basic Rights in the Workplace," see 24 Wake Forest L. Rev. 905 (1989).

Chapter 128.

Offices and Public Officers.

Article 3.

Retirement System for Counties, Cities and Towns.

Sec.
128-21. Definitions.

Sec.
128-27. Benefits.
128-37. Membership of employees of district health departments or public health authorities.

ARTICLE 3.

Retirement System for Counties, Cities and Towns.

§ 128-21. Definitions.

The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Accumulated contribution" shall mean the sum of all amounts deducted from the compensation of a member and credited to his individual account in the annuity savings fund, together with regular interest thereon, as provided in G.S. 128-30, subsection (b).

(2) "Actuarial equivalent" shall mean a benefit of equal value when computed at regular interest upon the basis of such mortality tables as shall be adopted by the Board of Trustees.

(3) "Annuity" shall mean payments for life derived from the accumulated contribution of a member. All annuities shall be payable in equal monthly installments.

(4) "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity computed at regular interest upon the basis of such mortality tables as shall be adopted by the Board of Trustees.

(5) "Average final compensation" shall mean the average annual compensation, not including any terminal payments for unused sick leave, of a member during the four consecutive calendar years of creditable service producing the highest such average; but shall not include any compensation, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages.

(6) "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance or other benefit as provided by this Article.

(7) "Board of Trustees" shall mean the Board provided for in G.S. 128-28 to administer the Retirement System.

(7a) "Compensation" shall mean all salaries and wages prior to any reduction pursuant to sections 125, 401(k), 403(b), 414(h)(2), and 457 of the Internal Revenue Code, not including any terminal payments for unused sick leave, derived from public funds which are earned by a member of the Retirement System for service as an employee in the unit of the Retirement System for which he is performing full-time work. "Compensation" shall not include any payment, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages.

(8) "Creditable service" shall mean "prior service" plus "membership service" for which credit is allowable as provided in G.S. 128-26.

(9) "Earnable compensation" shall mean the full rate of the compensation that would be payable to an employee if he worked the full normal working time, including any allowance of maintenance or in lieu thereof received by the member.

(10) "Employee" shall mean any person who is regularly employed in the service of and whose salary or compensation is paid by the employer as defined in subdivision (11) of this section, whether employed or appointed for stated terms or otherwise, except teachers in the public schools and except such employees who hold office by popular election as are not required to devote a major portion of their time to the duties of their office. In all cases of doubt the Board of Trustees shall decide who is an employee.

(11) "Employer" shall mean any county, incorporated city or town, the board of alcoholic control of any county or incorporated city or town, the North Carolina League of Municipalities, and the State Association of County Commissioners. "Employer" shall also mean any separate, juristic political subdivision of the State as may be approved by the Board of Trustees upon the advice of the Attorney General.

(11a) "Filing" when used in reference to an application for retirement shall mean the receipt of an acceptable application on a form provided by the Retirement System.

(11b) "Law Enforcement Officer" means a full-time paid employee of an employer, who possesses the power of arrest, who has taken the law enforcement oath administered under the authority of the State as prescribed by G.S. 11-11, and who is certified as a law enforcement officer under the provisions of Chapter 17C of the General Statutes or certified as a deputy sheriff under the provisions of Chapter 17E of the General Statutes. "Law enforcement officer" also means the sheriff of the county. The number of paid personnel employed as law enforcement officers by a law enforcement agency may not exceed the number of law enforcement positions approved by the applicable local governing board.

(12) "Medical board" shall mean the board of physicians provided for in G.S. 128-28, subsection (*l*).

(13) "Member" shall mean any person included in the membership of the Retirement System as provided in G.S. 128-24.

(14) "Membership service" shall mean service as an employee rendered while a member of the Retirement System.

(15) "Pension" shall mean payments for life derived from money provided by the employer. All pensions shall be payable in equal monthly installments.

(16) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed at regular interest upon the basis of such mortality tables as shall be adopted by the Board of Trustees.

(17) "Prior service" shall mean the service of a member rendered before the date he becomes a member of the System, certified on his prior service certificate and allowable as provided by G.S. 128-26.

(18) "Regular interest" shall mean interest compounded annually at such rate as shall be determined by the Board of Trustees in accordance with G.S. 128-29, subsection (b).

(19) "Retirement" shall mean withdrawal from active service with a retirement allowance granted under the provisions of this Article. In order for a member's retirement to become effective in any month, the member must render no service at any time during that month.

(20) "Retirement allowance" shall mean the sum of the annuity and the pension, or any optional benefit payable in lieu thereof.

(21) "Retirement System" shall mean the North Carolina Local Governmental Employees' Retirement System as defined in this Article.

(22) "Service" shall mean service as an employee as described in subdivision (10) of this section and paid for by the employer as described in subdivision (11) of this section.

(23) "Year" shall mean the regular fiscal year beginning July 1, and ending June 30; in the following calendar year unless otherwise defined by regulation of the Board of Trustees. (1939, c. 390, s. 1; 1941, c. 357, s. 1; 1943, c. 535; 1945, c. 526, s. 1; 1947, c. 833, ss. 1, 2; 1949, c. 231, ss. 1, 2; 1949, c. 1015; 1959, c. 491, ss. 1, 2; 1961, c. 515, s. 5; 1965, c. 781; 1971, c. 325, ss. 1-4; 1975, 2nd Sess., c. 983, s. 125; 1977, c. 316, ss. 1, 2; 1981, c. 557, ss. 1, 2; 1985, c. 479, s. 196(b); c. 649, s. 3; 1991, c. 51, s. 1; 1991 (Reg. Sess., 1992), c. 762, ss. 1, 2; 1997-144, s. 1.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, and applicable to all persons enrolled in the Local Governmental Employees' Retirement System on or after that date, rewrote subdivision (11b).

CASE NOTES

Actuarial Equivalent to Include Interest. — The actuarial value includes interest and there was no double recovery where the court was following the definition of actuarial equivalent as prescribed by this section and included interest in the underpayment award. Faulkenbury v. Teachers' & State Employees' Retirement Sys., 345 N.C. 683, 483 S.E.2d 422 (1997).

§ 128-24. Membership.

CASE NOTES

Cited in Miracle v. North Carolina Local Gov't Employees Retirement Sys., 124 N.C. App. 285, 477 S.E.2d 204 (1996).

§ 128-27. Benefits.

(a) Service Retirement Benefits. —

(1) Any member may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years and have at least five years of creditable service or shall have completed 30 years of creditable service, or if a fireman, he shall have attained the age of 55 years and have at least five years of creditable service.

(2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.

(3) Repealed by Session Laws 1971, c. 325, s. 12.

(4) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired.

(5) Any member who is a law enforcement officer, and who attains age 50 and completes 15 or more years of creditable service in this capacity or who attains age 55 and completes five or more years of creditable service in this capacity, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided, also, any member who has met the conditions required by this subdivision but does not retire, and later becomes an employee other than as a law enforcement officer, continues to have the right to commence retirement.

(a1) Early Service Retirement Benefits. — Any member may retire and receive a reduced retirement allowance upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 50 years and have at least 20 years of creditable service.

(b) Service Retirement Allowance of Persons Retiring on or after July 1, 1959, but prior to July 1, 1965. — Upon retirement from service on or after July 1, 1959, but prior to July 1, 1965, a member shall receive a service retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(2) A pension equal to the annuity allowable at the age of 65 years or at his retirement age, whichever is the earlier, on the basis of contributions made prior to such earlier age; and

(3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the annuity which would have been provided at the age of 65 years, or at the earlier age of retirement if prior thereto, by twice the contributions which he would have made during such period of service had the System been in operation and he contributed thereunder at the rate of

a. Six and twenty-five hundredths percent (6.25%) of his compensation if such certificate is a Class A certificate, or

b. Five percent (5%) of his compensation if such certificate is a Class B certificate, or

c. Four percent (4%) of his compensation if such certificate is a Class C certificate.

(b1) Service Retirement Allowances of Persons Retiring on or after July 1, 1965, but prior to July 1, 1967. — Upon retirement from service on or after July 1, 1965, but prior to July 1, 1967, a member shall receive a service retirement allowance which shall consist of:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to the sum of (i) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars ($4,800), plus one and one-half percent (1½%) of the portion of such compensation in excess of forty-eight hundred dollars ($4,800) multiplied by the number of years of his creditable service rendered prior to January 1, 1966, and (ii) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars ($4,800), plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service rendered after January 1, 1966.

(2a) If the member's service retirement date occurs on or after his sixtieth birthday but before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above but shall be reduced by five twelfths of one percent (5⁄12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefit provided by G.S. 128-27(b).

(b2) Service Retirement Allowances of Persons Retiring on or after July 1, 1967, but prior to July 1, 1969. — Upon retirement from service on or after July 1, 1967, but prior to July 1, 1969, a member shall receive a service retirement allowance which shall consist of:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of five thousand six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of five thousand six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3) Notwithstanding the foregoing provision, any member whose creditable service commenced prior to July 1, 1965, and policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b3) Service Retirement Allowances of Persons Retiring on or after July 1, 1969, but prior to July 1, 1973. — Upon retirement from service on or after July 1, 1969, but prior to July 1, 1973, a member shall receive a service retirement allowance which shall consist of:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or on or after his sixty-second birthday and the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3a) If the member's service retirement date occurs before his sixty-second birthday but on or after his sixtieth birthday and on or after completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-second birthday.

(3b) If the member's service retirement date occurs before his sixtieth birthday but on or after completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (3a) above.

(4) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b4) Service Retirement Allowances of Members Retiring on or after July 1, 1973, but prior to July 1, 1976. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1973, but prior to July 1, 1976, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs on or after his sixtieth birthday but before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b5) Service Retirement Allowances of Members Retiring on or after July 1, 1976, but prior to July 1, 1978. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1976, but prior to July 1, 1978, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-half percent (1½%) of his average final compensation, multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs on or after his sixtieth birthday but before his sixty-fifth birthday and prior to his completion of 30 or more years of service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b6) Service Retirement Allowance of Members Retiring on or after July 1, 1978, but prior to July 1, 1983. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1978, but prior to July 1, 1983, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-five one-hundredths percent (1.55%) of his average final compensation, multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b7) Service Retirement Allowances of Members Retiring on or after July 1, 1983, but prior to July 1, 1985. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1983, but prior to July 1, 1985, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-seven

one-hundredths percent (1.57%) of his average final compensation, multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b8) Service Retirement Allowance of Law Enforcement Officers Retiring on or after January 1, 1986, but before July 1, 1988. — Upon retirement from service, in accordance with subsection (a) above, on or after January 1, 1986, but before July 1, 1988, a member who is a law enforcement officer or an eligible former law enforcement officer shall receive the following service retirement allowance:

(1) If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one-third of one percent (1/3 of 1%) for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(b9) Service Retirement Allowance of Members Retiring on or after July 1, 1985, but before July 1, 1988. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1985, but before July 1, 1988, a member shall receive the following service retirement allowance:

(1) If the member's service retirement date occurs on or after his 65th birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) Such allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b), and (3).

(b10) Service Retirement Allowance of Members Retiring on or after July 1, 1988, but before July 1, 1989. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.

b. Such allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service, or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and sixty-hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.

b. Such allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b) and (3).

(b11) Service Retirement Allowance of Members Retiring on or after July 1, 1989, but before July 1, 1990. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, but before July 1, 1990, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a) and (3).

(b12) Service Retirement Allowance of Members Retiring on or after July 1, 1990, but before July 1, 1992. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1990, but before July 1, 1992, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a) and (3).

(b13) Service Retirement Allowance of Members Retiring on or after July 1, 1992, but before July 1, 1994. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1992, but before July 1, 1994, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b), and (3).

(b14) Service Retirement Allowance of Members Retiring on or after July 1, 1994, but before July 1, 1995. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1994, but before July 1, 1995, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b), and (3).

(b15) Service Retirement Allowance of Members Retiring on or after July 1, 1995 but before July 1, 1997. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1995, but before July 1, 1997, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy- two hundredths percent (1.72%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 128-27(b15)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b15)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-two hundredths percent (1.72%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b15)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 128-27(b15)(2)a. but reduced by the sum of five-twelfths of one percent (5⁄12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with

or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b15)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b15)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b16) Service Retirement Allowance of Member Retiring on or after July 1, 1997. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1997, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-six hundredths percent (1.76%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 128-27(b16)(1)a., reduced by one-third of one percent (1/3 of 1%) thereof for each month by which his retirement date precedes the first day of the month the coincident with or next following the month the member would have attained his 55th birthday; or
2. The service retirement allowance as computed under G.S. 128-27(b16)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement office or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-six hundredths percent (1.76%) of average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b16)(2)a. but shall be reduced by one-quarter of one percent (1/4 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 128-27(b16)(2)a. but reduced by the sum of five-twelfths of one percent (5/12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (1/4 of 1%) thereof for each month by with his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
2. The service retirement allowance as computed under G.S. 128-27(b16)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b16)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(c) Disability Retirement Benefits. — Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than 90 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the Medical Board shall not certify any member as disabled who:

(1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or

(2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law enforcement officer or a fireman as defined in G.S. 58-86-25 or rescue squad worker as defined in G.S. 58-86-30 and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement.

Notwithstanding the foregoing, effective April 1, 1991, the surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was to be due and payable, may elect to receive the reduced retirement allowance provided by a one hundred percent (100%) joint and survivor payment option in lieu of a return of accumulated contributions, provided the following conditions apply:

(1) The member had designated as the principal beneficiary, to receive a return of accumulated contributions at the time of his death, one and only one person, and

(2) The member had not instructed the Board of Trustees in writing that he did not wish the provision of this subsection to apply.

(d) Allowance on Disability Retirement of Persons Retiring prior to July 1, 1965. — Upon retirement for disability, in accordance with subsection (c) above, prior to July 1, 1965, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of the retirement;

(2) A pension equal to seventy-five percent (75%) of the pension that would have been payable upon service retirement at the age of 65 years had the member continued in service to the age of 65 years without further change in compensation.

Supplemental disability benefits heretofore provided are hereby made a permanent part of disability benefits after age 65, and shall not be discontinued at age 65.

(d1) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1965, but prior to July 1, 1969. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1965, but prior to July 1, 1969, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation, to the age of 60 years, minus the actuarial equivalent of the contributions he would have made during such continued service.

(2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefit provided by G.S. 128-27(d).

(d2) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1969, but prior to July 1, 1971. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1969, but prior to July 1, 1971, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation to the age of 65 years, minus the actuarial equivalent of the contributions he would have made during such continued service.

(2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefit provided by G.S. 128-27(d).

(d3) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1971, but prior to July 1, 1982. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1971, but prior to July 1, 1982, a member shall receive a service retirement allowance if he has attained the age of 65 years; otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to a service retirement allowance calculated on the basis of the member's average final compensation prior to his disability retirement and

the creditable service he would have had at the age of 65 years if he had continued in service.

(2) Notwithstanding the foregoing provisions,

a. Any member whose creditable service commenced prior to July 1, 1971, shall receive not less than the benefit provided by G.S. 128-27(d2);

b. The amount of disability allowance payable from the reserve funds of the Retirement System to any member retiring on or after July 1, 1974, who is eligible for and in receipt of a disability benefit under the Social Security Act shall be seventy percent (70%) of the amount calculated under a above, and the balance shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements; and

c. The amount of disability allowance payable to any member retiring on or after July 1, 1974, who is not eligible for and in receipt of a disability benefit under the Social Security Act shall not be payable from the reserve funds of the Retirement System but shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements.

(d4) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1982. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1982, a member shall receive a service retirement allowance if he has qualified for an unreduced service retirement allowance; otherwise the allowance shall be equal to a service retirement allowance calculated on the member's average final compensation prior to his disability retirement and the creditable service he would have had had he continued in service until the earliest date on which he would have qualified for an unreduced service retirement allowance.

(e) Reexamination of Beneficiaries Retired on Account of Disability. — Once each year during the first five years following retirement of a member on a disability allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of 60 years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by the physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of 60 years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights in and to his pension may be revoked by the Board of Trustees.

(1) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his disability retirement allowance and the gross compensation earned as an employee during the 12 consecutive months in the final 48 months of service prior to retirement producing the highest gross compensation excluding any compensation received on account of

termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%). Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability retirement and his age at the time of conversion to service retirement. This election is irrevocable.

The provisions of this subdivision shall not apply to beneficiaries of the Law Enforcement Officers' Retirement System transferred to this Retirement System who commenced retirement on and before July 1, 1981.

(2) Should a disability beneficiary under the age of 62 years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System and he shall contribute thereafter at the contribution rate which is applicable during his subsequent membership service. Any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of 50 years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration after June 30, 1951, and the pension that he would have received on account of his service since such last restoration had he entered service at that time as a new entrant.

(3) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1971, shall be entitled to an allowance not less than the allowance prescribed in a below reduced by the amount in b below.

a. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service.

b. The actuarial equivalent of the retirement benefits he previously received.

(3a) Notwithstanding the foregoing, should a beneficiary who retired on a disability retirement allowance be restored to service as an employee, then the retirement allowance shall cease as of the first day of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members. Upon the subsequent retirement of the beneficiary, he shall be entitled to an allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service. Provided, however, any election of an optional allowance cannot be changed unless the member subsequently completes three years of membership service after being restored to service.

(4) As a condition to the receipt of the disability retirement allowance provided for in G.S. 128-27(d), (d1), (d2) and (d3) each member retired on a disability retirement allowance shall, on or before April 15 of each calendar year, provide the Board of Trustees with a statement of his or her income received as compensation for services, including fees, commissions or similar items, and income received from business, for the previous calendar year. Such statement shall be filed on a form as required by the Board of Trustees.

The Director of the State Retirement Systems shall contact any State or federal agency which can provide information to substantiate the statement required to be submitted by this subdivision and may enter into agreements for the exchange of information.

(5) Notwithstanding any other provisions of this Article to the contrary, a beneficiary who was a beneficiary retired on a disability retirement with the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by a participating employer and beneficiaries last employed by a participating employer to this Retirement System and who also was a contributing member of this Retirement System at that time, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership. Any beneficiary who retired on a disability retirement allowance as an employee of any participating employer under the Law Enforcement Officers' Retirement System and becomes employed as an employee other than as a law enforcement officer by an employer participating in the Retirement System after the aforementioned transfer shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership until January 1, 1989, at which time his retirement allowance shall cease and his subsequent retirement shall be determined in accordance with the preceding subdivision (3a) of this section. Any beneficiary as hereinbefore described who becomes employed as a law

enforcement officer by an employer participating in the Retirement System shall cease to be a beneficiary and shall immediately commence membership and his subsequent retirement shall be determined in accordance with subdivision (3a) of this section.

(6) Notwithstanding any other provision to the contrary, a beneficiary in receipt of a disability retirement allowance until the earliest date on which he would have qualified for an unreduced service retirement allowance shall thereafter (i) not be subject to further reexaminations as to disability, (ii) not be subject to any reduction in allowance on account of being engaged in a gainful occupation other than with an employer participating in the Retirement System, and (iii) be considered a beneficiary in receipt of a service retirement allowance. Provided, however, a beneficiary in receipt of a disability retirement allowance whose allowance is reduced on account of reexamination as to disability or to ability to engage in a gainful occupation prior to the date on which he would have qualified for an unreduced service retirement allowance shall have only the right to elect to convert to an early or service retirement allowance as permitted under subdivision (1) above.

(f) Return of Accumulated Contributions. — Should a member cease to be an employee except by death or retirement under the provisions of this Chapter, he shall upon submission of an application be paid, not earlier than 60 days from the date of termination of service, his contributions and, if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon, provided that he has not in the meantime returned to service. Upon payment of such sum his membership in the System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered except as provided in G.S. 128-26; and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below. An extension service employee who made contributions to the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System as a result of dual employment may not be paid his accumulated contributions unless he is eligible to be paid his accumulated contributions in both systems for the same period of service.

Pursuant to the provisions of G.S. 135-56.2, a member who is also a member of the Consolidated Judicial Retirement System may irrevocably elect to transfer any accumulated contributions to the Consolidated Judicial Retirement System or to the Supplemental Retirement Income Plan and forfeit any rights in or to any benefits otherwise payable hereunder.

(f1) Notwithstanding the foregoing provisions, upon or after retirement any member who was a uniformed fireman and any surviving beneficiary of a member who was a uniformed fireman, shall upon submission of an application, be paid the sum of accumulated contributions, with regular interest thereon, made under those provisions of G.S. 128-30(b)(1) that applied from July 1, 1965, through June 30, 1971, to the extent of the contributions required of the member that were in excess of the contributions required of other members of the Local Governmental Employees' Retirement System covered under the Social Security Act as was from time to time in effect; provided that, the return of contributions shall be payable only if the contributions did not increase the retirement allowance of the member or surviving beneficiary under the provisions of this Chapter.

(f2) Expired.

(g) Election of Optional Allowance. — With the provision that until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance in a reduced allowance payable throughout life under the provisions of one of the Options set forth below. The election of Option two or Option three or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or the first retirement check has been cashed. Such election may be revoked by the member prior to the date the first payment becomes normally due or his first retirement check has been cashed. Provided, however, any member having elected Options two, three, or six and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new option.

Option one. (a) In the Case of a Member Who Retires prior to July 1, 1965. — If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees or, if none, to his legal representative.

(b) In the Case of a Member Who Retires on or after July 1, 1965, but prior to July 1, 1993. — If he dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less one one-hundred-twentieth thereof for each month for which he has received a retirement allowance payment, shall be paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees or, if none, to his legal representative; or

Option two. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement, provided that if the person selected is other than his spouse the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

Option three. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option four. Adjustment of Retirement Allowance for Social Security Benefits. — Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Table II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, upon application therefor, to receive a social security benefit.

Option five. For Members Retiring prior to July 1, 1993. — The member may elect to receive a reduced retirement allowance under the conditions of Option two or Option three, as provided for above, with the modification that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120th thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

Option six. A member may elect either Option two or Option three with the added provision that in the event the designated beneficiary predeceases the member, the retirement allowance payable to the member after the designated beneficiary's death shall be equal to the retirement allowance which would have been payable had the member not elected the option.

(g1) In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

(h) Until June 30, 1951, all benefits payable to or on account of any beneficiary retired before such date shall be computed on the basis of the provisions of Chapter 128 as they existed at the date of establishment of the Retirement System. On and after July 1, 1951, all such benefits shall be adjusted to take into account, under such rules as the Board of Trustees may adopt, the provisions of Chapter 128 and all amendments thereto in effect on July 1, 1951, and no further contributions on account of such adjustments shall be required of such beneficiaries. The Board of Trustees may authorize such transfers of reserves between the funds of the Retirement System as may be required on account of such adjustments.

(i) No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made.

(j) Increase in Benefits to Those Persons Who Were in Receipt of Benefits prior to July 1, 1967. — From and after July 1, 1967, the monthly benefits, to or on account of persons who commenced receiving benefits from the System prior to July 1, 1967, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Period in Which Benefits Commenced	Percentage
January 1, 1966, to June 30, 1967	5%
Year 1965	6%
Year 1964	7%
Year 1963	8%
Year 1962	9%
Year 1961	10%
Year 1960	11%
Year 1959	12%
Year 1958	13%
Year 1957	14%
Year 1956	15%
Year 1955	16%
Year 1954	17%
Year 1953	18%
Year 1952	19%
Year 1951	20%
Year 1950	21%
Year 1949	22%
Year 1948	23%
Year 1947	24%
Year 1946	25%

The minimum increase pursuant to this subsection (j) shall be five dollars ($5.00) per month; provided that, if an optional benefit has been elected, said minimum shall be reduced actuarially as determined by the Board and shall be applicable to a retired member, if surviving, otherwise to his designated beneficiary under the option elected.

(k) Post-Retirement Increases in Allowances. — As of December 31, 1969, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase that equals or exceeds three per centum (3%), each beneficiary receiving a retirement allowance as of December 31, 1968, shall be entitled to have his allowance increased three per centum (3%) effective July 1, 1970.

As of December 31, 1970, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase of at least one per centum (1%), each beneficiary on the retirement rolls as of July 1, 1970, shall be entitled to have his allowance increased effective July 1, 1971, as follows:

Increase In Index	*Increase In Allowance*
1.00 to 1.49%	1%
1.50 to 2.49%	2%
2.50 to 3.49%	3%
3.50% or more	4%

As of December 31, 1971, an increase in retirement allowances shall be calculated and made effective July 1, 1972, in the manner described in the preceding paragraph. As of December 31 of each year after 1971, the ratio (R) of the Consumer Price Index to such index one year earlier shall be determined, and each beneficiary on the retirement rolls as of July 1 of the year of determination shall be entitled to have his allowance increased effective on July 1 of the year following the year of determination by the same percentage of increase indicated by the ratio (R) calculated to the nearest tenth of one per centum (1/10 of 1%), but not more than four per centum (4%); provided that any such increase in allowances shall be contingent upon the total fund providing sufficient investment gains to cover the additional actuarial liabilities on account of such increase.

The allowance of a surviving annuitant of a beneficiary whose allowance is increased under this subsection shall, when and if payable, be increased by the same per centum.

Any increase in allowance granted hereunder shall be permanent, irrespective of any subsequent decrease in the Consumer Price Index, and shall be included in determining any subsequent increase.

For purposes of this subsection, Consumer Price Index shall mean the Consumer Price Index (all items — United States city average), as published by the United States Department of Labor, Bureau of Labor Statistics.

(*l*) Death Benefit Plan. — The provisions of this subsection shall become effective for any employer only after an agreement to that effect has been executed by the employer and the Director of the Retirement System. There is hereby created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement System, there shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

(1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs, or

(2) The greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;

(3) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2;

subject to a maximum of twenty thousand dollars ($20,000). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the System on his death pursuant to the provisions of subsection (f) of this section. For the purpose of the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

The death benefit provided in this subsection shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

(1) After June 30, 1969 and after he has attained age 70; or

(2) After December 31, 1969 and after he has attained age 69; or

(3) After December 31, 1970 and after he has attained age 68; or

(4) After December 31, 1971 and after he has attained age 67; or

(5) After December 31, 1972 and after he has attained age 66; or

(6) After December 31, 1973 and after he has attained age 65; or

(7) After December 31, 1978, but before January 1, 1987, and after he has attained age 70.

Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died or dies on or after January 1, 1974, but before January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or she had not yet attained age 66, was at the time of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained age 65, and otherwise met all conditions for payment of the death benefit.

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this Plan in the form of group life insurance, either (i) by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, or (ii) by establishing a separate trust fund qualified under section 501(c)(9) of the Internal Revenue Code of 1954, as amended, for such purpose. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

(1) For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of 12 consecutive months. For all other purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.

(2) Last day of actual service shall be:

a. When employment has been terminated, the last day the member actually worked.

b. When employment has not been terminated, the date on which an absent member's sick and annual leave expire.

(3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 128-26(g).

(4) A member on leave of absence from his position as a local governmental employee for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit, if applicable. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a local governmental employee during the 12-month period immediately prior to the month in which death occurred, not to exceed twenty thousand dollars ($20,000).

The provisions of the Retirement System pertaining to administration, G.S. 128-28, and management of funds, G.S. 128-29, are hereby made applicable to the Plan.

(*l*1) Death Benefit Plan for Law Enforcement Officers. — Under all requirements and conditions as otherwise provided for in subsection (*l*), except for the requirement that the provisions are effective only after an agreement has been executed by the employer and the Director of the Retirement System, all law enforcement officers who are members of the Retirement System shall participate and be eligible for group life insurance benefits under the Plan, and employers shall fund the cost of these benefits.

(*l*2) Death Benefit for Retired Members. — Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 1988, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and

Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars ($5,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(m) Survivor's Alternate Benefit. — Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option two of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that all three of the following conditions apply:

(1) a. The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance, or

b. The member had obtained 20 years of creditable service in which case the retirement allowance shall be computed in accordance with G.S. 128-27(b16)(1)b. or G.S. 128-27(b16)(2)c., notwithstanding the requirement of obtaining age 50.

(2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who is living at the time of his death.

(3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection apply.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (l) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase.

(n) Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1967. — From and after July 1, 1971, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1965, shall be increased by twenty percent (20%) thereof; the monthly benefits to or on account of persons who commenced receiving benefits after June 30, 1965 and before July 1, 1967, shall be increased by five percent (5%) thereof. These increases shall be calculated after monthly retirement allowances as of July 1, 1971 have been increased to the extent provided for in subsection (k) above.

(o) Increases in Benefits to Those Persons Who Were Retired prior to January 1, 1969. — From and after July 1, 1973, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to January 1, 1969, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Year(s) in Which Benefits Commenced	*Percentage*
1959 through 1968	10
1946 through 1958	25

These increases shall be calculated after monthly retirement allowances as of July 1, 1973, have been increased to the extent provided for in the preceding subsection (k).

(p) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. — From and after July 1, 1974, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1965, shall be increased by one percent (1%) thereof for each year by which the member retired prior to the age of 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1965, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1974, have been increased to the extent provided for in the preceding subsection (k).

(q) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1973, which shall become effective on July 1, 1974, as otherwise provided in G.S. 128-27(k), shall be the current maximum four percent (4%) plus an additional two percent (2%) to a total of six percent (6%) for the year 1974 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(r) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1974, which shall become payable on July 1, 1975, and to each beneficiary on the retirement rolls as of July 1, 1975, which shall become payable on July 1, 1976, as otherwise provided in G.S. 128-27(k), shall be the current maximum four percent (4%) plus an additional four percent (4%) to a total of eight percent (8%) for the years 1975 and 1976 only, provided that the increases do not exceed the actual percentage increase in the Consumer Price Index as determined in G.S. 128-27(k). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(s) Notwithstanding any other provision of this section, the increase in the allowance to each beneficiary on the retirement rolls as otherwise provided in G.S. 128-27(k) shall be the current maximum of four per centum (4%) plus an additional four per centum (4%) to a total of eight per centum (8%) on July 1, 1975, and July 1, 1976, provided the increases do not exceed the actual percentage increase in the cost of living as determined in G.S. 128-27(k). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary. The cost of these increases shall be borne from the funds of the Retirement System.

(t) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. — From and after July 1, 1975, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1965, shall be increased one percent (1%) thereof for each year by which the member retired prior to age 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1965, and before July 1, 1971, shall be increased by five percent (5%) thereof.

These increases shall be calculated before monthly retirement allowances as of June 30, 1975, have been increased to the extent provided in the preceding provisions of this Chapter.

(u) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1977, which shall become payable on July 1, 1978, as otherwise provided in G.S. 128-27(k), shall be the current maximum four percent (4%) plus an additional two and one-half percent (2½%) for the year beginning July 1, 1978. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(v) Increases in Allowances Paid Beneficiaries Retired prior to July 1, 1976. — From and after July 1, 1978, the monthly allowances paid to or on account of beneficiaries who commenced receiving such allowances prior to July 1, 1976, shall be increased by seven percent (7%) thereof. This increase shall be calculated before monthly allowances, as of July 1, 1978, have been increased to the extent provided for in the preceding subsections (k) and (u). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(w) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, as otherwise provided in G.S. 128-27(k), shall be five percent (5%) for the year beginning July 1, 1979. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(x) Increases in Benefits to Those Persons Who Were Retired prior to July 1, 1978. — From and after July 1, 1980, the monthly benefits to or on account of persons who commenced receiving benefits from the system prior to July 1, 1978, shall be increased by a percentage in accordance with the following schedule:

Period in Which Benefits Commenced	*Percentage*
On or before June 30, 1959	10%
July 1, 1959, to June 30, 1968	7%
July 1, 1968, to June 30, 1978	2%

This increase shall be calculated independent of any other post-retirement increase, without compounding, otherwise payable from and after July 1, 1980.

(y) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1980, which shall become payable on January 1, 1982, as otherwise provided in G.S. 128-27(h), shall be the percentage available therefrom plus an additional six and six-tenths percent (6.6%); provided that in no case shall the increase exceed a total of seven percent (7%). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of the beneficiary.

(z) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary as of July 1, 1983, which shall become payable on July 1, 1984, shall be three and eight-tenths percent (3.8%) as provided in G.S. 128-27(k) plus an additional four and two-tenths percent (4.2%) to a total of eight percent (8%). The provision of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary. The cost of these increases shall be borne from the funds of the Retirement System.

(z1) Notwithstanding the foregoing provisions, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1984, shall be increased by four percent (4%) of the allowance payable on July 1, 1984, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1984, but before June 30, 1985, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1984, and June 30, 1985.

(aa) From and after July 1, 1985, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1985, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1985. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1985, so as not to be compounded on any other increases payable on allowances in effect on June 30, 1985.

(bb) From and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1985, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1985, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1985, but before June 30, 1986, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1985, and June 30, 1986.

(cc) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1986, and June 30, 1987.

(dd) From and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1987, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on July 1, 1987, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1987, but before June 30, 1988, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1987, and June 30, 1988.

(ee) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1988. — From and after July 1, 1988, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1988, shall be increased by one and two-tenths percent (1.2%) of the allowance payable on June 1, 1988. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1988, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1987 Session of the General Assembly.

(ff) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989.

(gg) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1989. — From and after July 1, 1989, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1989, shall be increased by one and nine-tenths percent (1.9%) of the allowance payable on June 1, 1989. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1989, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1989 Session of the General Assembly.

(hh) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990. — From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session).

(ii) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990.

(jj) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1992. — From and after July 1, 1992, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1992, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 1992. This allowance shall be calculated on the allowance payable and in effect on June 30, 1992, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1991 Session of the General Assembly, 1992 Regular Session.

(kk) From and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1991, shall be increased by one and six-tenths percent

(1.6%) of the allowance payable on July 1, 1991, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1991, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1991 and June 30, 1992.

(*ll*) From and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1992, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1992, and June 30, 1993.

(mm) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1994. — From and after July 1, 1994, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1994, shall be increased by six-tenths of one percent (.6%) of the allowance payable on June 1, 1994. This allowance shall be calculated on the allowance payable and in effect on June 30, 1994, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1993 General Assembly in 1994.

(nn) From and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by two and eight-tenths percent (2.8%) of the allowance payable on July 1, 1993, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of two and eight-tenths percent (2.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(oo) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1994, shall be increased by two percent (2%) of the allowance payable on July 1, 1994, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1994, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1994, and June 30, 1995.

(pp) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1995. — From and after July 1, 1995, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1995, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1995. This allowance shall be calculated on the allowance payable and in effect on June

30, 1995, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1995 General Assembly.

(qq) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by seven-tenths of one percent (0.7%) of the allowance payable on July 1, 1993, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of seven-tenths of one percent (0.7%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(rr) From and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on July 1, 1995, in accordance with G.S. 128-27(k). Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996.

(ss) From and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1996, shall be increased by four percent (4%) of the allowance payable on June 1, 1997, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1996, but before June 30, 1997, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1996, and June 30, 1997.

(tt) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1997. — From and after July 1, 1997, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1997, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1997. This allowance shall be calculated on the allowance payable and in effect on June 30, 1997, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1997 General Assembly. (1939, c. 390, s. 7; 1945, c. 526, s. 4; 1951, c. 274, ss. 4-6; 1955, c. 1153, ss. 4-6; 1957, c. 855, ss. 1-4; 1959, c. 491, ss. 5-8; 1961, c. 515, ss. 2, 6, 7; 1965, c. 781; 1967, c. 978, ss. 3-7; 1969, c. 442, ss. 7-14; c. 898; 1971, c. 325, ss. 12-16, 19; c. 326, ss. 3-7; 1973, c. 243, ss. 3-7; c. 244, ss. 1-3; c. 816, s. 4; c. 994, ss. 2, 4; c. 1313, ss. 1, 2; 1975, c. 486, ss. 1, 2; c. 621, ss. 1, 2; 1975, 2nd Sess., c. 983, ss. 126-128; 1977, 2nd Sess., c. 1240; 1979, c. 862, ss. 2, 6, 7; c. 974, s. 1; c. 1063, s. 2; 1979, 2nd Sess., c. 1196, s. 2; cc. 1213, 1240; 1981, c. 672, s. 2; c. 689, s. 1; c. 940, s. 1; c. 975, s. 2; c. 978, ss. 3, 4; c. 980, ss. 1, 2; c. 981, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1284, ss. 1, 2; 1983, c. 467; c. 761, ss. 226, 227; 1983 (Reg. Sess., 1984), c. 1019, s. 1; c.

1044; c. 1049, ss. 1-3; c. 1086; 1985, c. 138; c. 348, s. 2; c. 479, s. 196(i)-(n); c. 520, s. 2; c. 649, ss. 8, 10; c. 751, ss. 1-4, 6; c. 791, s. 56; 1985 (Reg. Sess., 1986), c. 1014, s. 49(d); 1987, c. 181, s. 1; c. 513, s. 1; c. 738, ss. 27(c), 37(b); c. 824, s. 2; 1987 (Reg. Sess., 1988), c. 1061, s. 2; c. 1086, s. 22(c); c. 1108, s. 3; c. 1110, ss. 4-7; 1989, c. 717, ss. 13, 13.1; c. 731, s. 2; c. 752, s. 41(c); c. 792, ss. 3.4-3.6; 1989 (Reg. Sess., 1990), c. 1077, ss. 13-16; c. 1080; 1991, c. 636, s. 20(a); 1991 (Reg. Sess., 1992), c. 766, s. 1; c. 900, ss. 52(e)-(g), 53(a); c. 929, s. 1; c. 1030, s. 51.1; 1993, c. 321, ss. 74(b), 74.1(c), (d); c. 531, s. 3; 1993 (Reg. Sess., 1994), c. 769, ss. 7.30(b), 7.30(c), 7.30(d), 7.30(l); 1995, c. 507, ss. 7.22(e), (f), 7.23(c), (d), 7.23A(c); 1996, 2nd Ex. Sess., c. 18, s. 28.21(d); 1997-443, s. 33.22(g)-(j).)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, added subsection (rr).

Session Laws 1997-443, s. 33.22(g)-(j), effective July 1, 1997, twice inserted "but before July 1, 1997" in subsection (b15); added subsections (b16), (ss), and (tt); and substituted "G.S. 128-27(b16)(1)b. or G.S. 128-27(b16)(2)c." for "G.S. 128-27(b15)(1)b. or G.S. 128-27(b15)(2)c." in subdivision (m)(1)b.

CASE NOTES

Right of Employee to Rely on Retirement Plan. —

Where plaintiff had attained more than five years of creditable service before his injury, and before the date he submitted his application for disability retirement, he had contractual rights in pension fund. Hogan v. City of Winston-Salem, 121 N.C. App. 414, 466 S.E.2d 303 (1996).

The statute of limitations in subsection (i) applied and allowed plaintiffs to pursue claims for underpayment of disability retirement benefits for three years before they commenced actions. Faulkenbury v. Teachers' & State Employees' Retirement Sys., 345 N.C. 683, 483 S.E.2d 422 (1997).

§ 128-32. Protection against fraud.

CASE NOTES

Legislative Intent. — This section shows the intent of the General Assembly to allow the courts to require that compensation paid for underpayment of a pension compensation be paid at the actuarial value. Faulkenbury v. Teachers' & State Employees' Retirement Sys., 345 N.C. 683, 483 S.E.2d 422 (1997).

§ 128-37. Membership of employees of district health departments or public health authorities.

Under such rules and regulations as the Board of Trustees shall establish and promulgate, the boards of county commissioners of any group of counties composing a district health department, or the governing board of any public health authority, or the board of county commissioners of any county as to county boards of health, or the governing authorities of any county and/or city as to city-county boards of health, may elect that employees of such health departments may be members of the North Carolina Local Governmental Employees" Retirement System to the extent of that part of their compensation paid by the various counties composing said district health department. (1949, c. 1012; 1951, c. 700; 1997-502, s. 4.)

Effect of Amendments. — The 1997 amendment, effective January 1, 1998, and applicable to contracts and agreements entered into on or after that date, added "or public health authorities" to the section catchline, and inserted "or the governing board of any public health authority".

§ 128-38. Reservation of power to change.

CASE NOTES

Quoted in Faulkenbury v. Teachers' & State Employees' Retirement Sys., 345 N.C. 683, 483 S.E.2d 422 (1997).

Chapter 129.

Public Buildings and Grounds.

Article 7.

North Carolina Capital Building Authority.

Sec.
129-40 through 129-49. [Repealed.]

ARTICLE 2A.

State Legislative Building.

§ 129-12.1. Official name.

Editor's Note. — Article 2.1 was renumbered as Article 2A pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

ARTICLE 7.

North Carolina Capital Building Authority.

§§ 129-40 through 129-49: Repealed by Session Laws 1987, c. 71, s. 2, effective April 14, 1987.

Cross References. — As to the State Building Commission, see § 143-135.25 et seq.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

December 1, 1997

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1997 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by Michie under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY

Attorney General of North Carolina

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Department of Justice

Raleigh, North Carolina

December 1, 1997

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Michael F. Easley

Attorney General of North Carolina